



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 849 OF 2026
IN
CRIMINAL APPEAL NO. 147 OF 2026

Nagesh Subhash Vhawale

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....
Ms. Nupur Paliwal, Advocate h/f Mr. C.V. Dharurkar, Advocate for applicant
Ms. U.S. Bhosle, A.P.P. for respondent no.1 - State
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CORAM : RAJNISH R. VYAS, J.
DATE : 05th MARCH, 2026

PER COURT :

. This is an application for grant of bail and suspension of sentence.

2. Ms. Paliwal, learned counsel for the applicant contended that the accused is convicted for commission of offence punishable under Sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012 and maximum sentence imposed is of three years, so also fine of Rs.1,000/-. According to her, if testimony of the victim is perused, it would reveal that there are material contradictions in her testimony. According to learned counsel, since all throughout the trial, the applicant was on bail and the sentence is of fixed term, he is entitled for bail. Also, accused has good case

on merits and arguable point is made in appeal. She, therefore, prays for allowing the appeal.

3. Per contra, learned A.P.P. contended that it is not the length of sentence which is required to be taken into consideration, but the nature of evidence. She submitted that considering the fact that the victim, at the relevant time was nine years of age and the present applicant was 19 years, sentence may not be suspended.

4. With the assistance of both the counsels, I have gone through the documents produced on record and tendered across the bar, so also the judgments cited. In short, it is the case of prosecution that on the day of incident, the applicant had called the victim in the house on the pretext of playing mobile. He then took the victim in the bathroom, removed her pant and kissed her. The victim was then asked to reciprocate. She refused and came out of the bathroom. She then narrated the incident to her mother and consequently F.I.R. was registered on the same day.

5. At this stage it is necessary to mention here that the victim of crime, who was nine years of age, was examined as PW 3. She has stated in her testimony, which was recorded in question-answer form, that the accused had taken her in the bathroom where accused kissed on her lips and asked to

reciprocate, which she did not. She has also stated that the accused then asked her to remove her pant. Thereafter the victim pushed the hand of the accused and ran away. Thus, it will have to be seen from the testimony of other witnesses as to whether the case of prosecution that pant of the victim was removed, inspires confidence or not.

6. I am thus, of the opinion that arguable point is made out by the appellant in the appeal. At this stage it is necessary to mention here that sentence imposed upon the applicant is of fixed term i.e. of three years and all throughout the trial the applicant was on bail. Though that may not be an absolute ground to release him on bail, but is one of the additional factors which is required to be taken into consideration. Considering the aforesaid aspect and the fact that the sentence imposed is of fixed term, so also the fact that there is no chance that appeal will be decided in the near future, I am inclined to allow the application. Hence, the following order :-

ORDER

- (I) Criminal application is allowed.
- (II) The sentence imposed upon the applicant of three years for commission of offence punishable under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 by the Special Judge, Ambajogai in Special (POCSO) Case No. 89 of 2023 dated 07th February, 2026, shall stand suspended till decision on appeal.

- (III) The applicant shall be released on bail on same terms and conditions as were imposed by the trial Court.
- (IV) The victim be intimated about pendency of the criminal appeal.

(RAJNISH R. VYAS, J.)

SSD