

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 188 OF 2025
IN
CRIMINAL APPEAL NO. 1241 OF 2019

Suresh Ramchandra Pawar.

...Applicant.

Versus

The State of Maharashtra and Another.

...Respondents.

Mr. Amit Mane for the Applicant.

Ms. Veera Shinde, APP for the Respondent-State.

Mr. Nikhil Pawar for the Respondent No. 2.

Coram : R. G. Avachat &
Ajit B. Kadethankar, JJ.

Date : January 20, 2026.

P. C. :

1. Heard.
2. This is an application under Section 389 of Code of Criminal Procedure, 1973 for suspension of substantive sentence of imprisonment imposed upon Applicant by the learned Additional Sessions Judge, Sangli in Special (POSCO) Case No. 216 of 2014 vide its judgment and order dated 16th December 2018. The Applicant has been convicted for offences punishable under Sections 376(2)(i) and 506 of the Indian Penal Code, 1860 and Sections 6 of and 12 of the Protection of Children from Sexual Offences Act, 2012 and

consequently sentenced to various terms of imprisonment. The order of conviction and consequential sentence reads thus :

- "1) The accused Suresh Ramchandra Pawar r/o. Shivajinagar, Pawar mala, Palus Tal. Palus Dist. Sangli is held guilty for the offences punishable under sec. 376 (2)(i) of the Indian Penal Code and Section 6 of the Protection Of Children From Sexual Offences Act, however, separate punishment is not imposed on him for the offence punishable under sec. 6 of the Protection Of Children From Sexual Offences Act in view of rider of sec. 42 of the Protection Of Children From Sexual Offences Act.
- 2) The accused Suresh Ramchandra Pawar is convicted for the offence punishable under sec. 376 (2)(i) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life which shall mean imprisonment for the remainder of accused's natural life and with a fine of Rs. 25,000/- (twenty-five thousand) in-default to suffer simple imprisonment for six months.
- 3) The accused is held guilty for the offence punishable under section 506 of the I.P.C. and sentenced to suffer rigorous imprisonment for one year
- 4) The accused is held guilty for the offence punishable under section 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for three years and fine of Rs.5,000/- (five thousand) in-default to suffer simple imprisonment for one month.
- 5) All the substantive sentences of accused to run concurrently
- 6) Out of realised fine, fine of Rs.25,000/- (Rs.twenty-five thousand) will be paid to victim towards compensation for the physical and mental trauma suffered by her due to acts of the accused
- 7) Accused is entitled for the set off of the period of detention undergone by him against the substantive sentence.
- 8) Muddemal property Article Nos.I to VII and IX (as per article numbers given in the evidence) being worthless be destroyed after appeal period is over. Article No.VIII and XI (as per article numbers given in the evidence) i.e. seized mobiles be sold in public auction and amount be credited to Government. The Article No.XII, XIII, XIX and IV (CD Nos. 1 and 2 and photographs of the victim) be destroyed after appeal period is

over. Muddemal property one Omni Maruti Car bearing registration No.MH-10-AG-931 be handed to its registered owner after appeal period is over.”

3. Case of the prosecution was that Applicant was driver on a school van. The victim was 9 years of age. She was one of the students who would visit her school in the school van on which the Applicant was driver. On the given date, after having dropped other school children at their respective residences, the Applicant took the victim to some isolated place, undressed her and applied mouth to her private parts. The incident was witnessed by PW-15. On return of the victim to her residence, she was first taken to Primary Health Care centre, Tasgaon. The Medical Officer examined her there and then she was referred, for further medical examination, to civil hospital at Sangli whereat she was examined twice.

4. Before the trial Court, victim and her mother testified that victim was sexually abused and even there was penetrative sexual assault on 3 to 4 occasions before the incident in question. On trial, Applicant came to be convicted and consequently sentenced as stated hereinabove.

5. Learned Counsel for the Applicant would submit that the Applicant is behind the bars for little over 11 years. On the date of offence, the minimum sentence prescribed was 10 years which may

extend to imprisonment for life which shall mean the remainder of the life of convict.

6. Learned Counsel for the Applicant would submit that before the Primary Healthcare Centre, Tasgaon, the history was given by the victim's mother. Nothing was stated about the penetrative sexual assault. Medical Officer at Primary Healthcare Center did not notice any injury on the private part of victim nor did he opine as to having seen any evidence of penetrative sexual assault. The same is the case as regards the victim's second medical examination. According to him, even during third medical examination, medical officer has stated nothing about the same.

7. According to him, since the Applicant has been behind the bars for little over 11 years and he has wife and children to look after, the execution of remainder of substantive sentence of Applicant be suspended.

8. Learned APP, on the other hand, submitted that it was a serious offence. The victim was only 9 years of age. There is an eye witness account. The medical history given by the victim corroborates her testimony before the trial Court. The State is ready to work out the appeal on merits. This Court has turned down the similar application way back in 2022 and the Court was inclined to hear the appeal on merits. Learned APP relies upon the judgment of the Hon'ble Supreme

Court in the case of ***Jamnallal v. State of Rajasthan*** [in SLP (criminal) No. 69 of 2025]. She would further submit that on seizure of cellphone of Applicant, two video clips wherein the victim was seen nude were found. In such circumstances, the Applicant even does not deserve leniency on the ground he having been behind the bars for more than 10 years.

9. Learned advocate appointed to represent the victim in this matter reiterated the submissions made by learned APP.

10. We have considered the submissions advanced. The victim was about 9 years of age. The history given by the mother of victim to the medical officer reads thus :

"Incident took place at 26/7/2014 around 12.00 noon near Yelavi. It was done by school bus / vehicle driver. He was found applying mouth to the private part of the victim in a van. Girl was very irritable and frightened at that time also. No h/o alcohol intoxication, she has not attended menarche yet o/e geni – ovulate in time place p-80 / min. BP- 100/70 mmHg. No sign of intoxication. Clothes – back of school dress was stained with mud. Gait normal."

11. Relevant portion of the medical examination report at Primary Healthcare Centre reads thus :

"(X) Provisional opinion : Victim is examined after about 9 hours of the incidence.

7) Evidence of injuries to the genitals / anus : No external injuries.

8) Evidence related to non penetrative assault : cannot be ruled out.

9) Evidence of injuries suggestive of application of force / restraint : abrasion over right shin present.

10) Opinion as to age of injuries and nature of injuries : Age of injury within 24 hours. Simple injury."

12. Then there is second medical examination report which reads thus :

"With above clinical history and examination following opinion can be made

(1) No evidence to suggest for forceful intercourse but possibility of handling the genital tissue and or attempt penile penetration cannot be ruled out.

(2) As there is no evidence of sexual intercourse this question is not possible to answer.

(3) There is no evidence of any injury over vulval region, there is evidence of old hymnal tears at 4 O'clock and 8 O'clock position of approximate size 3 mm.

(4) She is not habituated for sexual intercourse."

13. Medical examination reports indicate that while the victim was medically screened, there were no signs of recent aggravated penetrative sexual assault. According to the victim, Applicant had misbehaved with her and did penetrative sexual assault thrice in the past.

14. True, there is evidence to indicate that the Applicant to have been found applied his mouth to private part of victim. The said offence would be in terms of clause (d) of Section 3 of the POSCO Act. As the provision stood then, the minimum sentence prescribed for the said offence was 10 years of RI which may extend to the remainder of life.

15. At this juncture, we do not propose to observe anything about the proportionality of sentence *vis-a-vis* crime established against the Applicant.

16. The fact is that for little over 11 years, the Applicant is behind the bars. He has wife and children to look after besides a married daughter.

17. It is true that way back in 2022, Applicant's similar application was rejected on merits. This Court by order dated 23rd September 2025 observed that if the appeal could not be taken up for final hearing, the application would be considered on merits and therefore we have referred to some of the evidence in this case. Since passing of said order in September 2025, the appeal could not be taken up for final hearing and therefore we have taken up this present application for deciding the same. Only on the ground that the Applicant is behind the bars for 11 years 4 months and 11 days, we are inclined to allow the application.

18. We are conscious of the observations made by Hon'ble Supreme Court in the case of ***Jamnala v. State of Rajasthan*** (supra) relied upon by learned APP. The facts therein, however, would indicate that offence did take place on 23rd June 2023, the trial appears to have been concluded within a year's time and the matter had reached Rajasthan High Court and ultimately the Hon'ble Supreme Court within further next one year, meaning thereby the convict in the said case was not behind the bars for even 2 years when the application for suspension of execution of substantive sentence of imprisonment was heard by

Rajasthan High Court. This makes all the difference.

19. For the aforesaid reasons, we allow this application with following order :

- [a] The substantive sentence imposed on Applicant by the learned Additional Sessions Judge, Sangli vide its judgment and order dated 10th December 2018 in Special (POSCO) Case No.216 of 2014 shall remain suspended till the final disposal of Criminal Appeal No.1241 of 2019.
- [b] The Applicant be released on his furnishing bail in the sum of Rs.15,000/- with one or more solvent sureties of like amount in connection with Special (POSCO) Case No. 216 of 2014.
- [c] Bail before the trial Court.
- [d] The Applicant shall furnish his residential address and contact details to the trial Court and inform the trial Court, from time to time, about any change in the same.
- [e] The Applicant shall not enter village Palus without leave of this Court.

20. The fees of Advocate appointed to represent the victim are quantified at Rs.15,000/-.

21. Application stands disposed of.

[Ajit B. Kadethankar, J.]

[R. G. Avachat, J.]