



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 135 OF 2026
IN
CRIMINAL APPEAL NO. 73 OF 2026

BHAGWAN SANTOSH BHOPALE
VS
STATE OF MAHARASHTRA AND ANR.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri M.V. Rai, Advocate for Appellant.
Shri B.M. Lonare, APP for respondent/State.
Shri H.V. Dhage, Advocate for respondent no. 2.

CORAM : NEERAJ P. DHOTE, J.
DATE : 30/03/2026

This is an Application for suspension of sentence imposed by the learned Special Judge (POCSO Act), Malkapur, District Buldhana in Special Case No. 26/2020 by judgment and order dated 13/01/2025, convicting and sentencing the Applicant/Appellant as follows:-

“(1) The accused by name Bhagwan Santosh Bhopale is convicted for offences punishable under Sections 376AB and 342 of the Indian Penal Code, 1860 as well as offences punishable under Sections 4 and 6 read with 5(m) of the Protection of Children from Sexual Offences Act, 2012 vide Section 235(2) of the Code of Criminal Procedure, 1973.

(2) He is sentenced to suffer rigorous imprisonment of 20 years and fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) in default to suffer rigorous imprisonment for two years for the offence punishable under Section 6 read with Section 5(m) of the Protection of Children from the Sexual Offences Act, 2012. No separate punishment needs

to be inflicted for the offence punishable under Section 376AB of the Indian Penal Code, 1860.

(3) He is sentenced to suffer rigorous imprisonment of 20 years and fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) in default to suffer rigorous imprisonment for two years for the offence punishable under Section 4(2) of the Protection of Children from the Sexual Offences Act, 2012.

(4) As per proviso to Section 4(2) and Section 6(2) of the Protection of Children from Sexual Offences Act, 2012, the entire fine amount, if recovered, be paid to the victim, if she is ready to accept it, after the appeal period is over.

(5) The accused is further sentenced to suffer rigorous imprisonment for one year with fine of Rs. 1,000/- for offence punishable under Section 342 of the Indian Penal Code, 1860.

(6) The substantive sentences of imprisonment inflicted for all offenses do run concurrently.

(7) The accused is detained during investigation and trial of this case since 05/01/2020 till 17/12/2021 for 712 days. Hence, he is entitled for set off under Section 428 of the Code of Criminal Procedure, 1973 against the period already undergone by him in detention before conviction."

(8)

(9)

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(11)

(12)"

2. It is the prosecution's case that, the victim who was 9 years old, was sexually assaulted by the Appellant on 04/01/2020 in his house. The minor brother of the victim

was also with her and who was hiding below the cot. In the evening, the victim's brother informed the incident to his mother. The mother asked the victim and the victim narrated the incident to the mother. The report was lodged with the Malkapur Police Station and the Crime bearing No. 06/2020 came to be registered for the offence punishable under Sections 376-AB & 342 of the Indian Penal Code, 1860 and for the offences punishable under Sections 4 and 6 r/w. 5(m) of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). After investigation, the charge-sheet was filed, and after the trial, the Appellant came to be convicted.

3. Heard the learned counsel for the Appellant, the learned APP for the State and the learned counsel for Respondent no. 2 - victim. With their assistance, perused the evidence on record.

4. The testimony of the victim who is examined as PW.-2 shows that, on the date of incident, the Appellant called her to his house while she was returning from the shop after coming from the school. Her brother PW.-4 was with her. According to the victim, by removing her clothes and his own clothes by the Appellant, the Appellant committed penovaginal intercourse with her thrice on 04/01/2021. The victim's testimony shows that, after the sexual assault on her, she went for tuition. The PW. 7, the Medical Officer who examined the victim shows that, the history by the victim was of touching & fondling and

exhibition of genitals of the Appellant. No injuries were found on the victim. The evidence of this Medical Officer shows that, she had given the provisional medical opinion that, it was not clear whether the sexual assault had taken place or not. There is substance in the submission of the learned counsel for the Appellant that, the victim's testimony, does not find support from the medical evidence. The Appellant has arguable points on merits. The Appellant was on bail during the trial. The Appellant is 65 years of age. There is no possibility that, the Appeal would be heard finally in near future. In this view of the matter, I am inclined to allow the application. Hence, the following order:-

ORDER

[I] Criminal Application is **allowed**.

[II] The substantive sentence imposed upon the Appellant by the learned Special Judge (POCSO Act), Malkapur, District Buldhana vide judgment and order dated 13/01/2025, passed in Special Case No. 26/2020, is hereby suspended till the final disposal of the Appeal.

[III] The Applicant/Appellant be released on bail on furnishing P.R. bond of Rs.25,000/- [Rupees Twenty Five Thousand Only] with one surety in the like amount.

[IV] The Applicant/Appellant shall co-operate in early disposal of the Appeal.

[V] Bail before the Trial Court.

[VI] Criminal Application stands **disposed** of accordingly.

(NEERAJ P. DHOTE, J.)

B.T.K.