

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 329 of 2023
With
I.A. No. 15954 of 2025

Bhartu Yadav, aged about 25 years, son of Late Charka Mahto,
resident of Village-Birajpur, P.O. & P.S.-Sonaraithari, District-
Deoghar, Jharkhand.

... .. Appellant

Versus

The State of Jharkhand

... .. Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant : Mr. Ankit Kumar, Advocate
For the Respondent : Mr. Abhay Kr. Tiwari, A.P.P.

05/Dated: 19th January, 2026

I.A. No. 15954 of 2025:

1. The instant Interlocutory Application has been filed under Section 430(1) of the Bharatiya Nagrik Suraksha Sanhita seeking therein suspension of sentence dated 23.01.2023 passed by the Court of learned Special Judge POCSO, Deoghar, in POCSO Case No. 37 of 2020, arising out of Deoghar (Mahila) P.S. Case No. 4 of 2020, whereby and where under the applicant has been held guilty for the charge under Section 376 (1) of the Indian Penal Code and Section 4 of the POCSO Act, and is sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Ten thousand) and in default of payment of fine the applicant has been further sentenced to undergo simple imprisonment of six months for the charge under Section 4 of the POCSO Act and the period of custody during investigation and trial of this case is directed to be set off.
2. Mr. Ankit Kumar, learned counsel for the applicant has submitted that the present interlocutory application has been filed for suspension of sentence primarily on the ground of completion of half of the sentence.

3. It has been contended that earlier, on merits, the prayer for suspension of sentence has been rejected vide order dated 30.08.2023 passed in I.A. No. 6790 of 2023.
4. Mr. Abhay Kr. Tiwari, learned Additional Public Prosecutor appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence and has submitted that merely on the ground of completion of half of the sentence, the sentence cannot be suspended taking into consideration the nature of crime committed by the applicant which has conclusively been proved having been dealt with by this Court while considering the prayer made for suspension of sentence in I.A. No. 6790 of 2023.
5. We have heard the learned counsel for the parties and gone through the order of rejection passed by this Court vide order dated 30.08.2023 in I.A. No. 6790 of 2023. For ready reference, the said order is being reproduced as under:

"I.A. No. 6790 of 2023

The instant Interlocutory Application has been filed under Section 389(1) of the Code of Criminal Procedure seeking therein suspension of sentence dated 23.01.2023 passed by the Court of learned Special Judge POCSO, Deoghar, in POCSO Case No. 37 of 2020, arising out of Deoghar (Mahila) P.S. Case No. 4 of 2020, whereby and where under the appellant has been held guilty for the charge under Section 376 (1) of the Indian Penal Code and Section 4 of the POCSO Act, and is further sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Ten thousand) and in default of payment of fine the appellant has been further sentenced to undergo simple imprisonment of six months for the charge under Section 4 of the POCSO Act and the period of custody during investigation and trial of this case is directed to be set off.

2. It has been contended on behalf of the appellant that it is a case where the prosecution has miserably failed to establish the charge said to be beyond reasonable doubt. Such submission has been made on the ground that there are contradictions in the testimony of the prosecution witnesses.

3. It has further been argued by referring to the testimony of P.W.-4, the victim, P.W.-1, the mother, and P.W.-2 the father, having major contradictions and in view thereof the learned Trial Court ought to have taken into consideration the aforesaid contradiction before coming to the conclusive finding of proving the charges said to be proved beyond all reasonable doubts.

4. Further submission has been made that even the doctor has not corroborated the prosecution version as has been deposed by the victim, P.W.-4. Learned counsel on the aforesaid premise has submitted that it is a fit case where the sentence is to be suspended.

5. While on the other hand Mr. Pankaj Kumar Mishra, learned Additional Public Prosecutor appearing on behalf of the State has submitted by referring to the testimony of P.W. -4, the victim, who has corroborated the prosecution version and remained consistent as to what she had stated while recording her statement under Section 164 of the Cr.P.C.

6. Learned Additional Public Prosecutor based upon the aforesaid submission has submitted that if the learned Trial Court by taking the consideration the testimony of P.W.-4, who remained consistent all along, if has convicted the appellant for the offence under Section 4 of the POCSO Act and Section 376(1) of the Indian Penal Code, the same cannot be said to suffer from any error and in that view of the matter, it is not a fit case for suspension of sentence.

7. We have heard learned counsel for the parties, perused the finding recorded by the learned Trial Court in the impugned judgement as also the documents available in the Lower Court Records.

8. It is evident from the fact that the age of the victim has been assessed to be of 14 years and there is no challenge with respect to the age of the victim. The victim has deposed about the commission of crime of rape upon her by the appellant. Her statement was recorded under Section 164 of the Cr.P.C. as has been marked as Exhibit-1, wherein the victim has disclosed the entire occurrence and by corroborating her version as was recorded under Section 164 of the Cr.P.C. has deposed in the Court in support of the prosecution version about the commission of crime of rape by the appellant.

9. The doctor although has found no sign of rape, which is the ground taken by the appellant by submitting that there is no ingredient of Section 376(1) of the Indian Penal Code.

10. This Court is of the view that so far as the argument advanced on behalf of the appellant that the doctor has not found any sign of rape is concerned, is insignificant in view of the version of P.W.-4, the P.W.-1 and P.W.-2, the mother and father, Furthermore, that under the nature of the offence either under Section 376(1) of the Indian Penal Code or under Section 4 of the POCSO Act, it is not necessary to have a physical relationship so as to attract the aforesaid provision.

11. Since the P.W.-4, victim, has corroborated the aforesaid version coupled with its corroboration by P.W.-1 and P.W.-2, we have not found any reason to suspend the sentence.

12. Accordingly, the aforesaid Interlocutory Application bearing I.A. No. 6790 of 2023, stands rejected.

13. It is made clear that any observation made herein above will not prejudice the case of the parties since the appeal is lying pending for its consideration.”

6. The present interlocutory application has been filed on the ground of completion of half of the sentence. The question of consideration of prayer for suspension of sentence on completion of half of the sentence is not a rule rather it is by virtue of an observation so made

by the Hon'ble Supreme Court for consideration of prayer for suspension of sentence on completion of half of the sentence.

7. We are conscious with the settled position of law that the period of custody cannot be the sole ground for suspension of sentence, rather, the nature of crime as has been found to be proved against one or the other, the applicant herein, is to be taken into consideration.
8. At this juncture it requires to refer herein that the Hon'ble Apex Court in the case of ***State of Haryana v. Hasmat, (2004) 6 SCC 175*** has observed that the appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail, and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine, for ready reference, the relevant paragraphs of the aforesaid judgment is being quoted herein:-

“6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

7. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the period the accused-respondent was granted parole.”

9. It is settled connotation of law that even if the convict has completed substantive sentence, that cannot be a sole ground for suspension of sentence if the nature of offence having been proved in course of trial is serious.
10. Recently the Hon'ble Apex Court in the case of ***Chhotelal Yadav versus state of Jharkhand & Anr. [CRIMINAL APPEAL NO.4804/2025 @ Special Leave Petition (Crl.) No.15688/2025]*** has

observed that even in cases where the sentence is for a fixed term, there is a caveat that if there are exceptional circumstances, then the Court may decline to suspend the sentence and what could be those exceptional circumstances is not something exhaustive. It is for the Court concerned to look into those exceptional circumstances as may be pointed out by the State.

11. This Court has considered the argument advanced on behalf of the applicant for suspension of sentence primarily on the ground of completion of half of sentence but this Court is of the view that merely on the ground of completion of half of the sentence, the present interlocutory application cannot be allowed due to the reason that the prosecution has conclusively proved the culpability committed on behalf of the applicant as would be evident from the testimony of P.W.-4, the victim, P.W.-1, the mother and P.W.-2, the father of the victim.
12. It is a case where the P.W.-4, the victim, who on the date of commission of crime, was minor having the age of 14 years was subjected to sexual assault and as such, the applicant has been convicted under Section 4 of POCSO Act and under Section 376 of IPC.
13. The version of the P.W.-4 which has been disclosed at the time of recording of the statement under Section 164 Cr.P.C. has conclusively been substantiated by the victim even in the testimony in course of trial.
14. This Court is of the view that merely on the basis of completion of half of the sentence, in a nature of a case which is available herein, if the applicant will be released, then, it will lead to miscarriage of justice and will accelerate the commission of offence which will be contrary to the spirit of the POCSO Act.
15. This Court, therefore, is of the view that it is not a case where merely on the ground of completion of half of the sentence, the present interlocutory application is to be allowed.

16. Accordingly, the present interlocutory application stands dismissed, as such, disposed of.

17. It is made clear that any observation made herein above will not prejudice the case of the parties since the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

19th January, 2026

Saurabh/-

N.A.F.R.

Uploaded on: 21.01.2026