

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1247 OF 2021 IN
CRIMINAL APPEAL NO.145 OF 2019**

Pappu s/o Dilip Chavan

... **APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....
Mr. R.G. Hange, Advocate for applicant

Mr. K.B. Jadhavar, A.P.P. for respondent – State

.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 3rd July, 2021

Date of pronouncing order : 14th July, 2021

ORDER :

This is an application for suspension of sentence of imprisonment. The applicant has been convicted for the offence under Section 3 punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.3000/-, in default to suffer further rigorous imprisonment for 3 months. The applicant has also been convicted for the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for 7 years and to pay fine of Rs.2000/-, in default to suffer further rigorous imprisonment for 3 months. The applicant has also been convicted for the offence punishable under Section 366-A of the Indian penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.2000/-, in default to suffer further rigorous imprisonment for 3 months. No separate punishment is awarded under Section 376(1) of the Indian Penal code and under Section 5 punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012. All the substantive sentences have been directed to run concurrently.

2. Heard Mr. Hange, learned counsel for the applicant. He would submit that, for over 3 years and 5 months the applicant has been behind the bars. The hearing of the appeal was expedited vide order dated 3/7/2019. There are no immediate prospects of the appeal to be heard finally. According to him, a prayer for suspension of sentence need to be considered by the appellate Court liberally. He relies on the judgment of the Apex Court in case of **Bhagwan Rama Shinde Gosai and others Vs. State of Gujarat** reported in (1999) 4 SCC 421 and urged for grant of the application.

3. The learned A.P.P., on the other hand, urged for

rejection of the application. According to him, the victim was a minor. The appellant was married. It is an offence of rape.

4. The applicant has been behind the bars for about 3 years and 5 months. The appeal is not likely to have its turn for final hearing in near future. It appears to be a case of emotional involvement. The victim in her statement under Section 164 of the Code of Criminal Procedure, does not attribute the applicant the act of sexual intercourse. As per the evidence of father of the victim, she was around 15 years of age. The Radiologist gave her age as 15 – 16 ½ years. The Medical Officer admitted in his cross-examination that, as per Modi's Medical Jurisprudence, it is mentioned crest of illium appearance fusion at 14/17 to 19 and it is correct.

5. In case of Bhagwan Rama Shinde Gosai (supra), the Hon'ble Supreme Court observed :-

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could

be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective.”

6. For the aforesaid reasons, the Criminal Application is allowed. Pending the appeal, the substantive sentences imposed by the trial Court are suspended and the applicant shall be released on bail on furnishing solvent surety in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(R. G. AVACHAT)
JUDGE

fmp/-