

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

**CRIMINAL APPLICATION NO. 4210 OF 2019
IN
CRIMINAL APPEAL NO.1265 OF 2019**

Gorakh s/o Baburao Pattekar ... Applicant
Versus
The State of Maharashtra ... Respondent

....
Mr. Ramchandra J. Nirmal, Advocate for the applicant
Mr. Y. G. Gujrathi, APP for the respondent-State

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 28th MAY, 2021
PRONOUNCED ON : 03rd JUNE, 2021**

ORDER :-

. This is an application for stay of execution of substantive sentence of imprisonment passed vide judgment and order dated 25.11.2019, by the learned Additional Sessions Judge-3, Jalna, in Special Case (POCSO) No.23/2015. The applicant has been convicted for the offence punishable under Section 376(2)(n) of the Indian Penal Code and sentenced to suffer 10 years rigorous imprisonment and to pay fine of Rs.25,000/- (Rupees Twenty Five Thousand Only) and in default to suffer rigorous imprisonment for three months.

2. Heard. Perused the impugned judgment and the relevant evidence relied upon.

3. The learned APP urged for rejection of the application on the ground of the victim having been around 12 years of age when the offence did take place.

4. The applicant is 24 years of age. When the offence took place, he was little over 18 years of age. The victim girl is stated to be around 12 years of age. It is in her evidence that she used to be in the field for grazing cattle. The applicant and co-accused (Juvenile) also used to be in the field grazing their cattle. Both of them had sexual intercourse with her many a time. The victim conceived. She delivered a baby. The FIR came to be lodged when her pregnancy came to light. The involved fate of the appeal would depend upon exact age of the victim when the offence did take place. The grand-parents and the mother of the victim have been examined. None of them gave date of birth of the victim. The school leaving certificate was tendered in evidence. In proof of the same, an Assistant Teacher of the school was examined. No other evidence in the nature of birth certificate or entry in birth register was produced. The medical officer who was examined in proof of radiological age

of the victim testified that the victim was about 17 to 19 years of age and capable to have sexual intercourse. The mother of the victim testified that the age of her elder daughter Urmila, was 25 years. The victim was born after 2½ years of the birth of Urmila. The mother further testified that the victim had only been to the school in the village. The mother of the victim might have been won over. The applicant was on bail pending the trial. For little over 1½ years, he is behind the bars. Due to the pandemic situation, the appeal may not be likely to have its turn for hearing it on merits. In view of all these facts I am inclined to grant the application. Hence, following order:-

ORDER

- (i) The application is allowed in terms of prayer clause [B].
- (ii) Pending the appeal, the substantive sentence imposed by the trial Court is suspended. The applicant be released on bail on his executing P R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.
- (iii) Bail before the trial Court.

[R. G. AVACHAT, J.]