

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 443 OF 2021
IN
CRIMINAL APPEAL NO. 124 OF 2021
WITH
CRIMINAL APPEAL NO. 124 OF 2021**

Laxman Gorakh Pitekar Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Kuldeep U. Nikam for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Sandeep R. Karnik for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2021.

P. C. :-

. This is an Application under Section 389 of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 22/12/2020 passed by the learned Special Judge, Satara in Special (Child) Case No.51/2014.

2. By the impugned judgment, the learned Special Judge has held the Applicant guilty of offences under sections 363, 377, 504, 506 of the Indian Penal Code and Section 3 and 4 of the Protection of Children from Sexual Offences (POCSO) Act and has sentenced him as

under :-

(a) seven years of rigorous imprisonment with fine of Rs.500/- for offence under section 4 of POCSO Act in default to suffer simple imprisonment for 15 days ;

(b) two years of rigorous imprisonment with fine of Rs.500/- in default simple imprisonment for 15 days for offence under section 377 of the Indian Penal Code ;

(c) one year of rigorous imprisonment with fine of Rs.500/- in respect of each of the offences under section 363, 504 and 506 of the Indian Penal Code in default simple imprisonment for one month.

3. Heard Mr. Kuldeep U. Nikam, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for the State and Mr. Sandeep R. Karnik, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The Applicant herein was prosecuted for committing offence

under section 363, 377, 504, 506 of the Indian Penal Code and Section 3 and 4 of the POCSO Act. The crime against the Applicant was registered pursuant to the first information report lodged by the mother of the victim on 19/05/2014. The accusations against the Applicant are that on 19/05/2014, he took the son of the first informant who was below the 18 years of age, to a shed at Daulatnagar, Pilleshwar Nagar and subjected the victim who was a child within the meaning of section 2(d) of POCSO Act, to carnal intercourse. The evidence of the victim prima facie indicates that the Applicant had subjected him to carnal intercourse.

5. The victim had identified the Applicant in the identification parade which was held within 15 days from the date of the incident. Moreover, the victim had also identified the Applicant in the Court. The victim had stated that the perpetrator of the crime had tattoo mark on his right forearm. It is to be noted that the MLC papers, genuineness of which is not in dispute, indicate that the Applicant was medically examined on 21/05/2015 and the Doctor has recorded that there was a tattoo mark 'Prasad' on the right forearm of the Applicant.

6. The evidence of Dr. Jyoti Anandrao Jadhav – PW6 also reveals

that she had medically examined the victim. She had found a tear of skin over external anus at 6 O clock position of size 0.5 cm x 0.5 cm, redness and diffuse Odema of annal margin and muscle dilated and tender on touch. The medical evidence also prima facie supports the case of the prosecution.

7. It is also on record that the Applicant is facing trial in Special (POCSO) Case No.47/2017 for similar offences. Considering the nature of the accusations, the evidence in support thereof and keeping in mind the societal interest, this is not a fit case for suspension of sentence and/or releasing the Applicant on bail. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)