

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**CRIMINAL APPLICATION [APPA] NO. 556/2021**  
**IN CRIMINAL APPEAL NO. 402/2021.**

Deepak Gendalal Gupta (in Jail)

**-Versus-**

State of Maharashtra and another.

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

Court's or Judge's orders

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Shri M.N. Ali, Advocate for the Applicant.  
Shri S.D. Sirpurkar, A.P.P. for the Non-applicant.

**CORAM : VINAY JOSHI, J.**

**DATE : OCTOBER 25, 2021**

Heard.

2. This is an application seeking suspension of execution of sentence imposed by the Additional Sessions Judge, Amravati in Special POCSO Case No.279/2016 on 02.09.2021. The learned Trial Court held the applicant/appellant guilty for the offence punishable under Sections 377, 506 of the Indian Penal Code and Section 3[a] read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO). The trial Court has imposed maximum sentence to undergo rigorous imprisonment for 12 years for the offence punishable under Section 4 of the POCSO Act, along with total

fine of Rs.35,000.

3. While seeking suspension, the learned Counsel for the applicant would submit that during the pendency of the trial, the applicant was on bail and he has deposited entire fine amount on 15.09.2021. Photocopy of the receipt is tendered for perusal. Learned Counsel for the applicant took me through the impugned judgment and copies of evidence recorded during the trial.

4. It was the prosecution case that on 10.04.2016, around 11.30 p.m. the accused, who is friend of the employer of the victim boy aged 17 years, took him to his residence and sexually assaulted him. The trial Court by placing reliance on the evidence of the victim boy, recorded a finding of guilt. Record indicates that during trial the prosecution though examined 10 witnesses, however, evidence of P.W.1 victim appears to be vital one. Admittedly the incident took place on 10.04.2016, whilst the report is lodged on 15.04.2016 i.e. after 5 days. It is brought to my notice that from 10.04.2016, the victim boy has attended his employers office regularly and also came in contact with his friends. It is emphasized that the victim was

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not under fear or pressure since he was following his daily routine, hence, the alleged report creates reasonable doubt. Moreover, it is submitted that there was a theft of cash amount in the office of the victims employer, of which allegation was against the victim boy. It is submitted that, since the accused is friend of victims employer and that he has exposed the theft, therefore, it is a case of false implication.

5. In order to strengthen the said defence, the accused has examined two witnesses. Besides that the learned Counsel for the applicant took me through the medico legal injury report which shows that there was total absence of injury and medical officer opined that unnatural sexual intercourse could not be possible.

6. The conviction is solely based on the victims' evidence. There is no corroboration from the medical evidence and there is 5 days delay in lodgment of the first information report. Considering these aspects the matter needs consideration, hence it is case to suspend the substantive sentence during the pendency of the appeal, hence, the following order.

(i) Criminal Application is allowed and

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disposed of.

- (ii) The execution and implementation of the substantive sentence imposed by by the Additional Sessions Judge, Amravati in Special POCSO Case No.279/2016 on 02.09.2021, stands suspended till the final disposal of the appeal.
- (iii) In the meantime, the applicant/appellant be released on bail on his execution P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

Rgd.

**JUDGE**