

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

**CRIMINAL APPLICATION NO. 348 OF 2022
IN
CRIMINAL APPEAL NO. 75 OF 2022**

Prabhu S/o Ram Dukare ... Applicant
Versus
The State of Maharashtra and another ... Respondents

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Mr. Sanjay A. Wakure, Advocate for applicant
Smt. Geeta L. Deshpande, APP for respondent No.1
Ms Sangita Sambre, Advocate (appointed) for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 05th APRIL, 2022

PER COURT :-

. Heard.

2. The applicant has been convicted for the offence punishable under Sections 354(A) (B), 376(2)(1) of the Indian Penal code and Sections 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for two months.

2. The applicant is 65 years of age. The victim was said to be around 13 years of age at the relevant time.

3. The learned APP and the learned Advocate representing the victim would submit that the medical evidence indicate that hymen was torn. It is also submitted that for constituting offence of rape, slight penetration is sufficient. Attention of this Court is also adverted to PW5, a so called independent eye witness to the incident. It is also submitted that the applicant has been behind the bars only for four months.

4. Considered the submissions advanced. Initially, the crime was registered under Section 354 of the Indian Penal Code, that too 24 hours after the alleged incident. A day after registration of the crime, Section 376 I.P.C. was invoked. The medical evidence doesn't indicate signs of sexual intercourse in the recent past. It is informed that the applicant had been beaten by the father of the victim and therefore, applicant was an indoor patient. The report lodged by the father of the victim was not taken cognizance of.

5. The applicant was on bail throughout the trial. The crime was registered after 24 hours and addition of Section 376 I.P.C. was 48 hours after the alleged offence.

6. This Court is expected to re-appreciate the evidence independently without influenced by the observations of the trial Court.

7. In the fitness of things, the execution of substantive sentence of imprisonment to stand suspended, pending the appeal. The applicant be released on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond in the like amount.

8. The application stands disposed of.

9. Fee of the learned Advocate (appointed) to represent respondent No.2 is quantified at Rs.6,000/- (Rupees Six Thousand Only).

[R. G. AVACHAT, J.]