

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

**CRIMINAL APPLICATION NO 562 OF 2020
IN
CRIMINAL APPEAL NO. 705 OF 2019**

Baban Raghunath Waghmare

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. A.T. Kanawade, Advocate for applicant

Mrs. G.L. Deshpande, A.P.P. for respondent no.1 – State

Mr. T.R. Daware, Advocate appointed for respondent no.2

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**CORAM : R.G. AVACHAT, J.
DATED : 31st JANUARY, 2022**

PER COURT :

1. Heard.

2. This is an application for suspension of substantive sentence of imprisonment. The applicant has been convicted for the offence punishable under Sections 376(1), 376(2)(f)(i)(n) of the Indian Penal Code and under Sections 4 and 6 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.30,000/-, in default to suffer simple imprisonment for three years and under Section 506(ii) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months.

3. Learned A.P.P. and learned counsel for Respondent No.2 – victim would submit that the applicant has committed a heinous offence. The victim was about eight years of age at the relevant time. They, therefore, urged for rejection of the application.

4. Learned counsel for the applicant would, on the other hand, submit that there is no substantive evidence against the applicant herein. The victim testified that the applicant did nothing with her. The applicant has been behind the bars for little over four years.

5. The victim testified in her examination-in-chief as under :-

“I have 2-3 uncles. I do not remember names of those uncles. When I was studying in 2nd standard that time my uncle used to come to my home. After coming to home my uncle did not use to bring me anywhere. Out of love and affection, my brother is called as Bittu. My uncle did not use to take my brother anywhere as well. I do not know whose shop was there in the lane, where we used to reside. Myself and my brother did not go to shop. My uncle used to come home but he did not use to do anything. My parents used to go out for work. My mother was serving in Z-Maha Sell at Hingoli. After departure of my parents for work, myself, my grand mother and my brother used to be at home. No incident took place. It did not happen that my uncle used to bring me and my brother for chocolate to a shop in our lane. It did not happen that after returning home, after taking chocolate, my uncle used to touch parts of my body inappropriately.”

6. The father of the victim has also not supported the prosecution.
7. In view of above and the fact that the appeal is not likely to come up for hearing in near future, I pass the following order :-

ORDER

- (i) Criminal application is allowed.
- (ii) The execution of substantive sentence of imprisonment of the applicant is 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 one surety in the like amount.
- (iii) Fees of Mr. T.R. Daware, learned counsel appointed for Respondent No.2 is quantified at Rs.5,000/-.

(R.G. AVACHAT, J.)

SSD