

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

**CRIMINAL APPLICATION NO. 736 OF 2022
IN
CRIMINAL APPEAL NO. 158 OF 2022**

Nitin Fakira Salve	]	
Age : 25 Years, Occupation : Labour,	]	
R/o. Rohanwadi, Tq. & Dist. Jalna.	]	... Applicant.

Versus

1. The State of Maharashtra	]	
2. XYZ	]	... Respondents.

. . .

Advocate for Applicant : Mr. S. J. Salunke
APP for Respondent – State : Mr. S. D. Ghayal
Advocate for Respondent No.2 : Mrs. Ranjana Reddy (Appointed through Legal Aid)

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATED : 16th SEPTEMBER, 2022.

ORDER :

Present application has been filed for suspension of sentence by original accused No.2. The applicant has been convicted in Special Case (Child) No.52 of 2015 by the learned Special Judge (under POCSO Act), Jalna, on 19th March 2020. After holding the applicant guilty of committing offence punishable under section 376(D) of Indian Penal Code, he has been directed to suffer imprisonment for life, which shall mean imprisonment for the remainder of his life and to pay fine of Rs.20,000/-, in default of payment

of fine, to suffer rigorous imprisonment for 3 (three) years. No separate sentence has been passed for the offence punishable under section 6 of POCSO Act.

2. Heard learned advocate Mr. Salunke for applicant, learned APP Mr. Ghayal and learned advocate Mrs. Reddy for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the learned trial Judge has not appreciated the evidence properly. The applicant has been convicted wrongly. When the deposition of witnesses were full of contradictions and omissions and the story about the alleged ravishment of the victim is unbelievable, the learned trial Judge ought not to have believed in the victim. The learned advocate representing the applicant has demonstrated those contradictions and omissions. It has also been stated that the delay in lodging the FIR has not been considered by the trial Court. Further, the Medical Officer who had examined the victim has admitted that test were not conducted to see whether the rape was committed within 24 hours prior to the examination. The victim has been examined two days after the alleged incident and the Medical Officer has observed that the tear to the hymen was the old one. Under such circumstance, when the applicant is having hope of success in the appeal, he need not kept behind the bar when his appeal has been admitted.

4. Per contra, the learned APP as well as learned advocate representing the respondent No.2 (appointed through Legal Aid) strongly opposed the application and submitted that the trial court has properly appreciated the evidence. Though for the other sections the applicant and co-accused have been acquitted yet as regards the gang-rape is concerned the point has been answered in the affirmative. A well reasoned order has been passed. Further the presumption under section 29 and 30 of POCSO Act has not been rebutted by the applicant. Therefore, the applicant need not be released on bail. He was never released on bail throughout the trial.

5. The first and foremost point that is going against applicant/appellant is that he was never released on bail throughout the trial. Now, the evidence is over and it has been appreciated by the trial Court. The prosecution case, in short, is that the victim who was 17 years old girl had gone along with her male friend and they were chit-chatting at a square on her scooter. The two accused went there and opposed themselves as police persons and thereafter they forcibly asked the friend of the victim as well as the victim to run from that spot. The girl was taken at a distance and thereafter it is stated that she was allowed to go. When she reached her house and tried to start her mobile phone, it couldn't be operated. At that time, she found both the accused had come near the gate of her house. She asked about the battery of her mobile. They told that it is lying on the spot in the square.

So she went again to the square, at that time it was dark around 9.00 p.m. They abducted her and taken her inside the forest area and ravished her.

6. It can be seen from the entire evidence that has been led that the victim was not at all knowing the present applicant and co-accused. She has identified them in the identification parade. Evidence to that effect has come on record. At this *prima facie* stage, it can be observed that the medical evidence is supporting the ocular evidence of the victim and the victim has with stood the ordeal of cross examination. Under such circumstance, there appears to be evidence against the present applicant and therefore this is not a fit case where his sentence should be suspended pending appeal.

7. The application stands dismissed.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)