

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

**CRIMINAL APPLICATION NO.2181 OF 2022
IN
CRIMINAL APPEAL NO.490 OF 2022**

Bhanudas s/o. Gangaram Bhise	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.N.S.Ghanekar, Advocate for applicant
Mr.A.M.Phule, APP for respondent no.1
Ms.Rashmi Kulkarni, Advocate (appointed) for respondent no.2

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.
DATE : NOVEMBER 17, 2022**

ORDER :-

This is an application under Section 389 of the Code of Criminal Procedure (Cr.P.C.). Vide order dated 22.06.2022 passed by learned Judge, Special Court (POCSO Act), Shrigonda, in Special (POCSO) Case No.141 of 2019, the applicant/appellant has been convicted for the offences punishable under Sections 376(2)(n) and 506 of Indian Penal Code (I.P.C.) and Sections 3 and 4 of the Protection of Children from Sexual Offences Act. For the offence under Section 376(2)(n) of I.P.C., the applicant has been sentenced to suffer imprisonment for life, which shall mean imprisonment for the

remainder of his natural life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months. For the offences under Sections 3 and 4 of POCSO Act, he has been sentenced to suffer rigorous imprisonment for ten years and pay fine of Rs.4,000/-, in default, to suffer simple imprisonment for three months. And for the offence under Section 506 of I.P.C, he has been sentenced to suffer rigorous imprisonment for one year.

2. Heard learned counsel for the parties. Perused the impugned judgment and the evidence relied on.

3. Learned counsel for the applicant relies on the evidence of the prosecutrix and her mother. PW 1 is mother of the prosecutrix/victim. She testified that 15 days before she lodged the FIR, the victim (her daughter) suffered stomach pains. She, therefore, took her to a dispensary. It was realised that the victim was pregnant of five months. After having taken her into confidence, the victim related her that it was the applicant, who had sexual intercourse with her in the field of one Gaikwad. He did such things with her on 2-3 times. It is further in her evidence that the victim also related her that one Namdev Adagale also had sexual intercourse with her.

4. During cross-examination of PW 1, it has come on record that the applicant was responsible for break-up of engagement of her elder daughter with a boy in Mumbai. A quarrel had, therefore, ensued between the two families. Before she lodged the FIR, she had discussion with some villagers. She, however, denied that rival group of the applicant had insisted to name the applicant in the FIR. Her evidence further indicates that soon before her statement under Section 164 of Cr.P.C. was recorded, she had discussion with the police officials, as to what was to be stated in her statement. She also testified that while the statement of the prosecutrix/victim was recorded, she (victim) was not aware of the names of the persons who had sexual intercourse with her. Her evidence suggests that Namdev (another convict) had good relations with her. He would extend them financial assistance.

5. The evidence of the victim is to the effect that the applicant had committed rape of her in the field of one Gaikwad. He threatened her with dire consequences, if she reported the incident to anyone. According to her, the relationship between the applicant and her mother have not been good.

6. Learned APP and learned counsel for respondent no.2 would submit that as the victim was below 18 years of age at the material time and she has named the applicant to have had sexual intercourse with her 2-3 times, the trial Court, on appreciation of evidence, has rightly convicted the applicant. The victim had become destitute. She delivered a baby. Both victim and her child have been in shelter home. Both learned counsel urged for rejection of the application.

7. Considered the submissions advanced. Perused the evidence relied on.

8. The victim was below 18 years of age at the relevant time. The FIR came to be lodged when it was realised that the victim was 5 months' pregnant. As such, there was delay of little over 5 months in lodging of the FIR. The victim delivered a baby. The DNA report indicates that one Namdev (another convict) is the biological father of the victim's new born. As such, so far as present applicant is concerned, the evidence is only in the nature of oral testimony of the prosecutrix/victim.

9. The applicant was on bail, pending trial. The appeal is not likely to come up for hearing in the near future. The informant

has admitted to have had some discussion with the villagers before the FIR was lodged. She had discussion with the police officers about what was to be stated in her statement under Section 164 of Cr.P.C. There is material to indicate that all was not well between the applicant and the victim's mother, as he had played spoilsport in break-up of engagement of the informant's elder daughter.

10. For all these reasons, we are inclined to suspend execution of the substantive sentence. Hence, the order:-

(i) The application is allowed;

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed vide order dated 22.06.2022 passed by learned Judge, Special Court (POCSO Act), Shrigonda, in Special (POCSO) Case No.141 of 2019, to stand suspended. The applicant be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.6,000/- (Rupees Six Thousand).

[R. M. JOSHI, J.]

[R.G. AVACHAT, J.]

KBP