

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

**CRIMINAL APPLICATION NO. 2729 OF 2022
IN
CRIMINAL APPEAL NO. 784 OF 2022**

Mohan Jaysing Nimbalkar

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. R.S. Shinde, Advocate h/f Mr. V.P. Latange, Advocate for applicant

Mr. S.P. Deshmukh, A.P.P. for respondent no.1 – State

Mr. A.B. Gaikwad, Advocate for respondent no.2 (appointed through Legal Aid)

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ**

DATE : 01st DECEMBER, 2022

PER COURT :

1. This is an application under Section 389 of Code of Criminal Procedure for suspension of execution of substantive sentence of imprisonment passed by the learned Judge, Special Court (POCSO Act), Shrigonda in Special Case No. 115 of 2021 vide judgment and order dated 31st December, 2021. The applicant has been convicted and subsequently sentenced for various offences as under :-

Sr.No.	Offences	Sentence/Fine
1.	376(1) of I.P.C.	Imprisonment for life and fine of Rs.5,000/-, in default, R.I. for six months
2.	506 of I.P.C.	R.I. for one year

3.	4 of POCSO	Imprisonment for life and fine of Rs.5,000/-, in default, R.I. for six months.
4.	3(1)(w) of SC& ST Act	R.I. for two years and fine of Rs.2,000/-, in default, R.I. for two months
5.	3(2)(v) of SC & ST Act	Imprisonment for life and fine of Rs.5,000/-, in default, R.I. for six months

2. Heard. Issue notice to the respondent. Learned A.P.P. waives service of notice for Respondent No.1 – State and Mr. Gaikwad, learned counsel, appointed through Legal Aid, for Respondent No.2.

3. Learned A.P.P. and learned counsel representing Respondent No.2 – victim urged for rejection of the application on the ground of nature of offence and evidence obtainable in the case.

4. The victim was said to have been about sixteen years of age at the material time. In proof of her age, her secondary school record was tendered in evidence. As per the case of the victim herself, she had been sexually ravished by the applicant twice about 10/12 days before lodging of the F.I.R. What triggered to lodge the F.I.R. was a fact that younger sister of the victim had seen the applicant dragging the victim to his residence with an oblique motive. The said incident has also been reported to the police two days thereafter.

5. Since there is delay of little over 10/12 days in lodging of the F.I.R. and the fact that the appeal is not likely to be heard in immediate

future, we are inclined to allow the application as under :-

ORDER

(i) Criminal application is allowed in terms of prayer clause [B].

(ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is 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) Bail before the trial Court.

(iv) The applicant shall not enter village Patewadi, Tq. Karjat, Dist. Ahmednagar for next two years.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD