

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (APPA) NO.405 OF 2022**  
**IN**  
**CRIMINAL APPEAL NO.343 OF 2022**

(Gajanan s/o Shivaji Gawai Vs. State of Maharashtra thr. PSO PS Channi, Tah. Patur,  
Dist. Akola and another)

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*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.*

*Court's or Judge's orders.*

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Mr. N. R. Tekade, Advocate for Applicant.  
Mr. S. S. Doifode, APP for Respondent 1/State.  
Mrs. Priyanka Arbat, Advocate (Appointed) for Respondent 2.

**CORAM: ROHIT B. DEO AND ANIL L. PANSARE, JJ.**

**DATE: 5<sup>th</sup> SEPTEMBER, 2022.**

The applicant is convicted for offence punishable under Sections 376 (2)(i), 376 (2)(j) and 506 of the Indian Penal Code and sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and is sentenced to suffer imprisonment for life.

2. The edifice of the prosecution case is constructed on the evidence of the child victim and medical evidence.

3. We have perused the evidence of the child. Her answers in the concluding part of the cross-examination are extracted thus:

Question: Is it correct that the accused did nothing with you?

Answer: It is correct.

Question: Is it correct that what so ever you have stated before court is stated as per instructions of grand-mother?

Answer: Yes.

4. We have further perused the evidence of the Doctor (PW-4) in whose cross-examination it is extracted that he did not find any forcible injury by insertion of finger in the vagina of the child victim. The Doctor further admits that the injury noticed by him can be caused by fall or by cycling and that his opinion is not a final opinion.

5. The learned APP, fairly states, in response to our query, that there is no other material on record against the accused.

6. Considering that the defence has brought on record previous inimical relationship, and the evidence which is extracted by us *supra*, we find that a case is made out for suspension of sentence.

7. The substantive sentence is suspended till the disposal of the appeal.

8. Bail shall be as in the trial court.

9. The appellant shall attend each and every date of hearing.

10. The appellant shall not contact the child victim or her family members directly or indirectly.

11. The application is allowed in the aforesaid terms.

12. The fees of the appointed counsel be paid in accordance with rules.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

*NSN*