

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

CRIMINAL APPLICATION (APPA) NO. 435 OF 2022

IN

CRIMINAL APPEAL NO. 362 OF 2022

(Khudboddin Khan Fakroddin Khan ..vs.. State of Maharashtra, through PSO, PS MISC, Akola and
another)

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

Court's or Judge's orders

None for the applicant/appellant,
Mr. M.K. Pathan, Addl.P.P. for respondent 1/State.

**CORAM : ROHIT B. DEO &
URMILA JOSHI-PHALKE, JJ.**
DATED : 21-11-2022

None appears on behalf of the applicant-appellant.

2. The applicant-appellant is convicted for offences punishable under Sections 376(2)(f)(n) and 376(C) of the Indian Penal Code and Section 3 punishable under Section 4, Section 5(l)(n) punishable under Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act) and is sentenced to suffer imprisonment for life.

3. The victim is the biological daughter of the appellant who then was 14 years old. The allegation which is held proved by the trial Court, is that the appellant repeatedly raped his daughter and she conceived. The pregnancy was terminated.

4. We have scrutinized the evidence on record and the grounds in the memo of appeal and the application seeking suspension of sentence. The thrust appears to be that the victim and her mother did not support the prosecution. It is true that the victim and her mother have opted not to support the prosecution. However, we find that there is ample evidence on record to bring home the charge. The DNA profiling has shown the appellant to be the biological father of the fetus. The statement of the victim is recorded not only by the police but by the President of the Child Welfare Committee, Akola. The disclosures made by her to witnesses, including her teacher, do corroborate the case of the prosecution.

5. Considering the nature of the allegation, we are not inclined to suspend the sentence.

6. The application is rejected.

7. However, we expedite the hearing of the appeal.

Criminal Appeal 362/2022

List the appeal for final hearing as soon as the paper-book is ready.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)