

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

**2 CRIMINAL APPLICATION NO.228 OF 2023
IN APPEAL/680/2021**

. Vishnu Chandrayya Yedulla
Age: 37 years, R/o. Khilaganpur,
Tq.Vanaparti, Dist.Mehboobnagar,
State – Telangana,
Now R/o. Kapre-Mala, Akolnear Road,
Kedgaon, Ahmednagar. ..Applicant

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Kotwali Police Station,
Dist.Ahmednagar.
2. XYZ ..Respondents

...
Advocate for Applicants : Mr.Chaitanya V. Dharurkar
APP for Respondent no.1 : Mr.S.J.Salgare
Advocate for Respondent no.2 : Ms. Ashwini Lomte (appointed)

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 21 AUGUST, 2023

ORDER :-

1. Present application has been filed for suspension of sentence by the original accused, who faced trial in Sessions Case No.165 of 2015 before the learned Judge, Special Court (POCSO Act), Ahmednagar. He has been held guilty for committing offence

punishable under Section 376(2)(i) of the Indian Penal Code (IPC) as amended by Criminal Law (Amendment) Act, 2013, and sentenced to to suffer imprisonment for life till his natural death and to pay fine of Rs.50,000/-, in default to suffer simple imprisonment for one year. Further he has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for one month for offence under Section 354-A(1)(i) of the IPC as amended by Criminal Law (Amended) Act 2013. Further he has been sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 506 of the IPC. No separate punishment has been awarded for the offence under Section 5(j)(ii) and 5(1) punishable under Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. Heard learned Advocate for the applicant, learned APP for respondent no.1 and learned Advocate for respondent no.2.

3. With the able assistance of learned Advocates for both the sides, we have gone through the paper book, which is now already prepared.

4. The main submission on behalf of the applicant - appellant is that the learned trial Judge has not appreciated the evidence properly. The applicant is in jail since the date of his arrest i.e. 28-04-2015 and when now he has undergone substantial sentence, he needs to be released on bail by suspending sentence. The second limb of submission is that the learned Judge, Special Court has relied on the testimony of prosecutrix, who was then aged 14 years at the time of her testimony, and failed to consider that her FIR and the testimony is the outcome of tutoring of her real father. The applicant has accepted that he got acquaintance with the mother of deceased, who was staying with the prosecutrix and her brother and there were no cordial relations between the father of the victim and her mother. The accused had helped mother of the victim as her husband was not providing household expenses and the mother was suffering from HIV. The applicant originally belongs to Telangana State but due to his constrained financial condition, he had come to Ahmednagar in search of livelihood. Then he had got acquaintance with the mother of the prosecutrix. The accused shifted back to Telengana in October-November 2014. He was working in Ahmednagar in a liquor shop and has examined a defence witness to show that he left the job in July 2014. The offence said to have been committed somewhere in

the month of November, 2014. Infact as per the evidence of prosecutrix, by end of December, 2014, she herself alongwith mother and brother went to stay at a different place and unfortunately, her mother expired on 05-01-2015. Thereafter, her father had taken her as well as her brother alongwith him. The father of the girl had then demanded amount from the applicant, but he could not fulfill and therefore, he has been falsely implicated. The present applicant has also stated that there is manipulation in the samples taken for DNA as the Police and the father of the prosecutrix were hand-in-gloves. There is a good case for the applicant with this kind of evidence and therefore, the sentence needs to be suspended.

5. Per contra learned APP as well as learned Advocate for respondent no.2, appointed to represent her cause, strongly opposed the application and they supported the reasons given by learned trial Judge while convicting applicant. They submitted that there is no objection as regards to extraction of DNA samples, its preservation, transportation to the Laboratory and that the DNA test is positive. When the FIR was lodged, the victim was pregnant and the child was born on 26-08-2015. That testimony of the girl has not been shaken in cross-examination. That applicant has committed one of

the heinous crimes and therefore, his sentence need not be suspended.

6. We have scanned the evidence for the limited purpose as to whether sentence awarded to applicant can be suspended in this case.

7. **PW2** is the prosecutrix girl, who said to be 14 years old at the time of her testimony and it can be seen from cross-examination that her age was not seriously challenged. When FIR was lodged, she was 13 years old. At the time of FIR, she was pregnant and that pregnancy was revealed after death of her mother, who was suffering from HIV. Now as regards her pregnancy is concerned, the DNA test has been conducted after the birth of the child and it is positive. Now as regards the questions raised in respect of alleged tampering is concerned, they will have to be considered at the time of final hearing and not at this stage.

8. In a way, applicant has tried to take plea of alibi by saying that he was not present at the time of alleged incident and therefore, he has examined witness in defence.

DW1 Durgadas Pochhanna Gosalwar has deposed that accused left the job with him after July 2014. This does not show that the applicant had shifted to Telangana. He might have left the job at Ahmednagar with DW1 Durgadas. The acquaintance with the mother of the victim and the victim is not denied. So also as regards to his false implication, it has to be considered at the time of final hearing and therefore, we do not find, taking into consideration the evidence regarding the heinous crime, that sentence needs to be suspended. Application, therefore, stands rejected.

9. Fees of learned Advocate appointed for respondent No.2 is quantified @ Rs.5,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE