

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

**945 CRIMINAL APPLICATION NO.356 OF 2023
IN APEAL/60/2023**

Rahul s/o Pandit Magare

...Applicant

VERSUS

1. The State of Maharashtra

2. X.Y.Z.

...Respondent

...

Advocate for Applicants : Mr.Sandanshiv Milind B.
APP for Respondent No.1 State : Mr.A.S.Shinde
Advocate for Respondent No. 2 : Mr. Subhash S. Nade
(Appointed)

...

**CORAM : R. G. AVACHAT, J.
DATE : 04.05.2023.**

PER COURT :

1. Heard. This is an application for suspension of execution of substantive sentence of imprisonment.

2. The applicant has been convicted for the offence punishable under Section 376 (2) of the Indian Penal Code (for short "IPC") and Section 4(1) and 6 of the Protection of Children From Sexual Offences Act and sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs.

25,000/- with default stipulation.

3. The learned APP has strong objection to grant the application. According to him the DNA report nails the applicant. He would further submit that, the date of birth of the victim has been proved by the oral evidence of the witnesses besides her school record. According to him, it is a serious offence. Post conviction, the compromise has no relivence. He, therefore, urged for rejection of the application.

4. Considered the submissions advanced. At the relevant time, the applicant was 20 years of age and the victim was stated to have been 16 years of age. True, the DNA report indicates the applicant to be the biological father of the child born to the victim. Now the question is of the age of the victim. The victim's evidence about the date of birth is necessarily hear say. The Headmistress of the school has been examined in proof of the victim's school record. Admittedly, the Headmistress was not there while the victim was admitted to the school. There is no evidence to indicate on what information the date of birth of the victim was recorded in the School record. It is informed that, the victim is now married and leading happy life. The

mother of the victim has filed affidavit giving no objection for grant of the application. The appeal is of 2023. The applicant is just 21 years of age and now behind the bars. A moot question in the appeal would be, whether the victim has duly been proved to be a child at the time the offence was committed. In view of the same, the Court is inclined to allow the application. Hence the order :

ORDER

- (a) The application is allowed.
- (b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 4 of 2020 by the judgment and order dated 05.01.2023 to stand suspended and 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.

(R. G. AVACHAT)
JUDGE

mahajansb/