

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

**CRIMINAL APPLICATION NO.984 OF 2023 IN
CRIMINAL APPEAL NO.36 OF 2022**

Mukadar Osman Shaikh

... **APPLICANT**

VERSUS

The State of Maharashtra & anr.

... **RESPONDENTS**

.....
Mr. P.P. More, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent No.1
Mr. M.D. Gitte, Advocate for respondent No.2.
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CORAM : R.G. AVACHAT, J.

DATE : 13th APRIL, 2023

ORDER :

Heard. This is an application for suspension of substantive sentence of imprisonment. The applicant has been convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act and therefore sentenced to suffer rigorous imprisonment for 20 (Twenty) years and to pay fine of Rs.25,000/-, in default to suffer S.I. for 2 years. The appeal filed by the appellant has been admitted by this Court.

2. The learned A.P.P. and learned counsel representing the respondent No.2 – victim would submit that, it is a serious offence. The applicant has sexually exploited a minor girl many a time. The trial Court has convicted him with sound reasons. Hearing of the appeal may be expedited. They, therefore, urged for rejection of the application.

3. In short, the case of the prosecution was that, P.W.3 Raosaheb (informant) and accused No.2 Kashibai were husband and wife. The couple is blessed with three children. One of them was the victim – a girl child. She was stated to be close to 18 years of age at the relevant time. As per the case of the prosecution and evidence in the case, on 20/10/2019, the informant Raosaheb (P.W.3) was away in the field. He returned home by 8.30 p.m. His son – Karan was unconscious. Another son Mukesh was crying. He found his wife and the victim girl were not at home. He first called his brother, shifted Karan to hospital. Son Mukesh told the informant that one person had come home. He caught hold of his mother Kashibai (accused No.2) and took away her and the victim girl with him.

4. It is also his case that, the victim girl, on 8/11/2019, called him on cell phone and informed that the present applicant had detained her in one room and sexually

exploited her thrice. Her mother was present on those occasions. The crime, therefore, came to be registered. The victim also gave her statement. She was medically examined.

5. Close reading of the relevant evidence and the impugned judgment, it appears that, the Medical Officer gave his opinion that the victim was not subjected to sexual violence. When P.W.3 Raosaheb had lodged the report, an enquiry in that regard was made. Both, the informant's wife Kashibai and her daughter (victim girl) appeared at the concerned police station. Both of them gave their statements. The victim girl gave her statement on 4th November, stating therein that nobody either kidnapped or abducted her mother and herself. She went on to state in her statement that she and her mother had stayed at her maternal uncle's house at Latur. She also stated to have been safe at the house of her maternal uncle.

6. It appears that, the victim changed her stands thereafter. She left the company of her mother and joined the father (informant). As such, there was a delay of over 11 days in lodging of the F.I.R. The victim herself in her previous statement stated that, no person had kidnapped her and her mother, and both of them were safe at her maternal uncle's house. When those statements were given by them to the

police, the informant too had appeared at the concerned police station. He was informed that, the earlier complaint lodged by him was disposed of in view of the statements of his wife and the victim – the girl child.

7. The applicant is in jail since 10/3/2020. As such, he is behind the bars for little over three years as against the sentence of 20 years. It will take time for the appeal to come up for hearing by its turn. The victim being a grown up child, changed her version. Initially she claimed to have not been kidnapped by the applicant or anyone else. She stated to have stayed along with her mother at her maternal uncle's house. Her medical examination report appears to have ruled out sexual assault. As such, it is a fit case to grant the application although the learned counsel representing the victim submitted that the intention of the legislature in introducing the Protection of Children from Sexual Offences Act has to be carried into effect by the Court concerned. There can be no two views over the submission made by learned counsel. One has to go by the facts and circumstances of each case.

8. For the reasons given hereinabove, the Court is inclined to allow the application. Hence the order :

ORDER

(i) The application is allowed.

(ii) Pending the appeal, the execution of the substantive sentence of imprisonment imposed upon the applicant by learned Special Judge, Ahmedpur, District Latur in Special (POCSO) Case No.5/2020 to stand suspended and the applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(R.G. AVACHAT, J.)

fmp/-