

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

**CRIMINAL APPLICATION NO.1175 OF 2023 IN  
CRIMINAL APPEAL NO.3 OF 2023**

Amjad Musa Pathan

... APPLICANT

**VERSUS**

The State of Maharashtra & anr.

... RESPONDENTS

.....  
Mr. S.J. Salunke, Advocate for applicant  
Mr. N.T. Bhagat, A.P.P. for respondent No.1.  
Mr. K.S. Solanke, Advocate for respondent No.2.  
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**CORAM : R.G. AVACHAT, J.**

**DATE : 3rd APRIL, 2023**

**PER COURT :**

Heard. Learned A.P.P. waives service for the respondent.

2. The applicant has been convicted for the offence punishable under Sections 377, 323, 506 read with Section 34 of the Indian penal Code, and Section 6 of the Protection of Children from Sexual Offences Act and the maximum period of imprisonment directed to undergone by the applicant is 15 years and fine with default stipulation. He was on bail during

trial. This Court had granted the applicant bail pending trial.

3. It appears that, on account of the absence of the applicant before the trial Court, non-bailable warrant was issued against him and he was arrested.

4. Learned counsel for the applicant states that, the medical evidence does not support the prosecution case. He takes this Court through the evidence of the Medical Officer P.W.4 Rameshwar. It is in his evidence that, he examined the victim boy on 29/3/2016. He did not notice any injury at anus of the victim. The C.A. reports also support the applicant's case. To tip it, although the victim gave his evidence consistent with his statement under Section 164 of the Code of Criminal Procedure, in the cross-examination, he testified to have deposed before the Court as per the say of his parents.

5. The record further indicates that the parents of the victim had informed the trial Court to have settled the matter. The father of the victim is also appearing before this Court through his Advocate. He has no objection if the applicant is granted suspension of execution of substantive sentence of imprisonment. As such, the learned A.P.P. has no option but to

urge for passing necessary orders.

6. In view of the aforesaid state of affairs, the Court is inclined to allow the application. Hence the order :

**ORDER**

(i) application is allowed.

(ii) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by learned Special Judge (POCSO Act), Ambajogai, District Beed by judgment and order dated 10/12/2022 passed in Spl. (POCSO) Case No.5/2016 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/-