

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

15 CRIMINAL APPLICATION NO.1415 OF 2023
IN APEAL/387/2023 WITH APEAL/387/2023

BABULAL BARKU BHIL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. C. T. Jadhav (Appointed counsel)
APP for Respondent-State: Mr. P. M. Kulkarni
Advocate for Respondent No.2: Mr. R. A. Tambe (Appointed counsel)
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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 23/10/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused, is seeking suspension of his substantive sentence of imprisonment for 7 years, for offence punishable under Section 354-B of the Indian Penal Code in Special Case (POCSO) No.1 of 2022.
3. The learned counsel for the applicant submits that the applicant / accused has been convicted only under Section 354-B of IPC and the evidence of eye witness also does not inspire confidence. Moreover, the name of said eye witness has also been differently mentioned at different places. According to him, the applicant has already undergone sentence of imprisonment of 1 & 1/2 years up till now.
4. On the contrary, the learned counsel for respondent No.2 victim as well as the learned A.P.P. strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. The learned

counsel for the respondent No.2 victim pointed out that the applicant / accused was in fact intending to commit more grave offence but the victim was saved due to intervention of eye witness at right time. He pointed out that the age of victim was merely of 6 years at the time of incident, whereas age of the applicant / accused was of 28 years.

5. The record shows that the victim has given true account of the incident while deposing before the court. Moreover, there is also one eye witness by whose intervention at proper time saved the victim. The victim was merely aged about 6 years and therefore, the act which was performed by the applicant / accused was condemnable. There is prima facie material against the applicant / accused and he was an under trial prisoner through out the trial. Therefore, considering the tender age of victim and heinous act of the applicant / accused, I am not inclined to suspend his sentence during the pendency of this appeal. As such, the application stands rejected.

6. The fees of the appointed counsel for applicant as well as respondent No.2 be quantified as per rules and be paid to them.

7. The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)