

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

**956 CRIMINAL APPLICATION NO.1457 OF 2023
IN APEAL/329/2023**

Bhagwan Pratap More

...Applicant

VERSUS

1. The State of Maharashtra

2. XYZ

...Respondents

...

Advocate for Applicant : Mr. Ravindra Shinde h/f Mr.Sawant
Amol Shivajirao

APP for Respondent No. State : Mr.K.N.Lokhande

Advocate for Respondent No. 2 : Mr.Gaikwad Rahul Malhari
(appointed)

...

CORAM : R. G. AVACHAT, J.

DATE : 25.04.2023.

PER COURT :

1. Heard.

2. The learned Advocate appointed to represent the victim has strong objection to suspend the execution of the substantive sentence of imprisonment. According to him, there is evidence to show that the victim is a child. He took the Court through paragraph No. 47 of the impugned judgment. According to him, the medical evidence supports the prosecution case.

Since the victim was child at the relevant time, her consent was immaterial. According to him, it is a serious offence, the applicant does not deserve grant suspension of substantive sentence of imprisonment.

3. It is a case of emotional relationship. Both applicant and the victim had eloped and stayed together for over two months. It is only on the intervention of the parents of the victim they were separated. At the relevant time, the applicant was 19 years of age. The victim was little over 14 years old. The applicant has been behind the bars for little over 5 years as against 10 years imprisonment. The appeal is of the year 2023 and is not likely to be heard in the near future. The applicant has undergone more than half of the sentence of imprisonment. In view of the same, this is a fit case to suspend the substantive sentence of imprisonment of the applicant. Hence, the application is allowed in terms of the following 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 Dhule, in Special Case

(POCSO) No. 59 of 2017, by the judgment and order dated 15.02.2023 to stand suspended. 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.

(c) The fees of the learned Advocate appointed to represent respondent No. 2 is quantified at Rs. 7,000/- (Rs. Seven Thousand Only).

(R. G. AVACHAT)
JUDGE

mahajansb/