

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

**977 CRIMINAL APPLICATION NO.1602 OF 2023
IN APEAL/100/2023**

Subodh s/o Gangadhar Mawde

...Applicant

VERSUS

1. The State of Maharashtra

2. XYZ

...Respondents

...

Advocate for Applicant : Mr.Gangakhedkar Shailendra S.

APP for Respondent State : Mr.N.T.Bhagat

Advocate for Respondent No. 2 : Ms.Jayashree Nawale
(appointed)

...

CORAM : R. G. AVACHAT, J.

DATE : 03.05.2023.

PER COURT :

1. Heard.

2. This is an application for suspension of execution of substantive sentence.

3. The applicant is convicted for the offences punishable under Section 376(3) of the Indian Penal Code and Section 3 punishable Section 4, under Section 5(n) punishable

under Section 6 and Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act. The applicant has to undergo sentence of 20 years of imprisonment.

The sentences have been directed to run concurrently.

4. The learned APP for the Respondent State and the learned Advocate for the victim have strong reservations for granting the relief to the applicant. According to them, the victim was just 12 years of age at the relevant time. It is not the case of emotional involvement. They, therefore, urged for rejection of the application.

5. At the relevant time, the applicant was 20 years of age. He is behind the bars for two years and three months. The medical examination report neither supports the prosecution case nor defence. Since the Medical Officer reserved his opinion pending C.A. report, the C.A. report does not support the prosecution case. As such, the Court has to rely only on the testimony of the victim. If the appeal is dismissed on merits, the applicant will have to go back to the jail. Considering the age of the applicant, there being no supportive medical evidence and the fact that the appeal is not likely to be heard in near

future, the Court is inclined to allow the application. In view of these facts, 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 Extra District Judge-1 and A.S.J. Special (POCSO) Court, Nanded in Special (POCSO) Case No. 42 of 2020, by the judgment and order dated 11.01.2023 to stand suspended and the applicant is 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 on following conditions :

- (i) The applicant shall not enter the village Nimgaon, Tq.Nanded for next three months.
- (ii) The fees of the learned Advocate appointed to represent respondent No. 2 is quantified Rs. 8,000/- (Rs. Eight Thousand).

(R. G. AVACHAT)
JUDGE

mahajansb/