

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

CRIMINAL APPLICATION NO.1978 OF 2023
IN APEAL/468/2023 WITH APEAL/468/2023

SADDAM RAHIM SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. A. M. Gaikwad
APP for Respondent: Mrs. Vaishali N Patil Jadhav
Advocate for respondent No.2 : Mr. S. A. Quadari

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CORAM : S. G. MEHARE, J.

DATE : 04.08.2023

PER COURT :

1. Heard the learned counsel for the applicant, the learned A.P.P. and the learned counsel for the victim.
2. The applicant who is real uncle of the victim who was 4 and 1/2 years old at the time of incident has been convicted for the commission of offence of sexual assault and rape on her. The mother was the first witness who noticed bleeding from her private part and after enquiry, the victim narrated the incident to her mother. The evidence of mother supported with the medical evidence is sufficient to believe that the victim was sexually assaulted. The victim was 4 and 1/2 years old. The irregularities on her part to state before the Court are obvious. The rule appreciating the evidence of such witness under the Protection of Children

From Sexual Offences Act (POCSO) should be different from the general rule of the appreciating the evidence in regular cases. The circumstances of the case are to be considered. The daughters have great intimacy with the mother and they share everything with the mother. Hence, the mother was the good witness on sexual assault. In the peculiar circumstances, the defence of the applicant that the grand parents and father have not been examined, hence, the case falls under the shadow of doubt are unsustainable. The victim of 4 and ½ years old has no reason to lie against the applicant. The material available on record and the circumstances does not support the applicant, to suspend the sentence.

3. Considering the age of the victim, their relations, the gravity of the offence and the evidence against the accused, the Court is of the view that this is not a fit case to exercise discretion under Sections 389 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

The application stands dismissed.

(S. G. MEHARE)
JUDGE

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