

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

CRIMINAL APPLICATION NO.2026 OF 2023  
IN APEAL/430/2023

VIJAY SHANKAR POUL  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...  
Advocate for Applicant : Mr. Shikrashna B. Solanke  
APP for Respondent No.1/State : Mr. S. B. Narwade  
Advocate for Respondent No.2 : Ms. Nima R. Suryawanshi  
(appointed)  
...

**CORAM : S. G. MEHARE, J.**

**DATE : 17-08-2023**

**PER COURT :-**

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent No.1/State and the learned counsel for respondent No.2/victim.

2. The applicant seeks suspension of the sentence imposed upon him by the learned Special Judge, Ambajogai, in his judgment and order dated 19.04.2023 passed in Special (Child) Case No.50 of 2022, to suffer rigorous imprisonment for ten years for the offence punishable under Section 376(2)(n) of the Indian Penal Code, rigorous imprisonment for three years for the offence punishable under Section 354B of the Indian Penal Code, rigorous imprisonment for seven years for the offence punishable under Section 363 of the Indian Penal Code, rigorous imprisonment for

twenty years each for the offence punishable under Section 4(2) and 6 of the Protection of Children from Sexual Offences (POCSO) Act and rigorous imprisonment for three years for the offence punishable under Section 8 of the POCSO Act.

3. The learned counsel for the applicant has argued that the allegations levelled against the accused are vague. The victim was not consistent as regards the spot and the nature of the incident. She had changed the spot of incident in her statement under Section 164 of the Code of Criminal Procedure. The medical evidence is also not cogent and reliable. That may not be considered as corroborative piece of evidence. He would submit that there was no immediate disclosure of the incident to her mother. The prosecution did not prove the case beyond reasonable doubt. The applicant is twenty one, having no antecedents to his discredit. The appeal may take its time to conclude. There are no possibilities of hearing the appeal on merit in near future. Hence, the sentence may be suspended.

4. The learned A.P.P. for the State and the learned counsel for the victim submit that at the time of the incident the victim was twelve years old. The applicant has committed heinous crime. There is no material discrepancy as regards the incident for which the applicant has been convicted. The applicant did repeated forceful sex with a child of twelve. The imprisonment is severe.

Considering the gravity of the offence and the vulnerability of a child, the applicant has no good case for suspension of the sentence.

5. The applicant was under-trial prisoner. The evidence *prima facie* reveals that he has committed a heinous crime of repeated penetrative sexual assault with a girl of twelve. The medical evidence supports the prosecution or atleast that cannot be discarded at this juncture. Where the offence is serious and the term of imprisonment is also long, the suspension of sentence shall be denied. However, the applicant may request the Court for expediting the appeal. Considering facts and law, the Court is not satisfied that this is a fit case to suspend the sentence.

6. For the above reasons, the application stands dismissed.

7. The applicant is at liberty to seek the circulation for early hearing.

8. The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do pay the fee to the learned counsel appointed for respondent No.2/victim as per the schedule.

**( S. G. MEHARE )**  
**JUDGE**

rrd