

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

**944 CRIMINAL APPLICATION NO.2737 OF 2022
IN APEAL/603/2022**

Ravindra Puna Randhe

...Applicant

VERSUS

1. The State of Maharashtra

2. XYZ

...Respondents

...

Advocate for Applicants : Mr.Chatterji Joydeep
APP for Respondent No.1-State : Mr.K.N.Lokhande
Advocate for Respondent No. 2 :Mr. A.P.Yenegure

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CORAM : R. G. AVACHAT, J.

DATE : 19.04.2023.

PER COURT :

1. Heard.

2. The applicant has been convicted for the offence punishable under Section 354 of the Indian penal Code and sentenced to suffer rigorous imprisonment for 01 year and to pay fine of Rs. 500/-, in default to suffer rigorous imprisonment for 10 days. He is also convicted for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act (for short "POCSO Act") and sentenced to suffer

rigorous imprisonment for 5 years and to pay fine of rs. 3,000/-, in default to suffer rigorous imprisonment for 1 month. He is further convicted for the offence punishable under Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for 20 years and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for 2 months. All the sentences have been directed to run concurrently. The applicant has to undergo maximum sentence of rigorous imprisonment for a period of 20 years.

3. According to the learned Advocate for the applicant, the trial Court has erred in convicting the applicant for the offence of aggravated penetrative sexual assault. According to him, at the most it could be an offence punishable under Section 10 of the POCSO Act, which provides maximum punishment for a term of 7 years imprisonment. The applicant has been convicted for a term of 5 years for this offence. The learned Advocate adverts the Court's attention to the factual evidence before the Court. Her statement under Section 164 of the Cr.P.C. and then her police statement, wherein the victim stated that the applicant touched her private part. The learned Advocate further adverts the Court's attention to the medical

evidence of the victim. The Medical Officer did not give his opinion about the medical screening report which was prepared soon after the victim was examined. During her examination, the doctor stated that it is a case of penetrative sexual intercourse. It is also informed that the police had time and again solicited his opinion pending the investigation. He, however, did not respond.

4. The learned APP submits that, the Doctor's evidence relied on indicates that there was redness- tenderness on the private part of the victim. Doctor opined that same may occur with the result of insertion of either finger or other object, while the applicant allegedly touched the private part of the victim, he must have at least to some extent inserted the finger.

5. The learned APP further submits that, even we take the evidence of the victim as it is, it would be an offence of attempt to commit aggravated penetrative sexual assault, punishable with imprisonment to the extent of half of the maximum punishment provided for the offence of aggravated penetrative sexual assault. According to her, the maximum punishment provided is imprisonment for life. In terms of

Section 57 of the Indian Penal Code. Life term is when it is to be calculated in terms of fraction is stated to be of 20 years. According to the learned APP and the learned Advocate for the victim, the offence committed by the applicant is aggravated penetrative sexual intercourse or at least an attempt to commit said offence.

6. According to the learned APP and the learned Advocate representing the victim, it is a serious offence . The victim was little over 4 years of age at the relevant time and the applicant was 60 years of age.

7. The learned Advocate representing the victim and the learned APP might be right in submitting that there might have been even slight penetration. The Court has, however, to go through first victim's evidence. The victim in no uncertain terms deposed that the applicant touched her private part. The testimony of the victim's mother is hear-say. The applicant is behind bars little over 3 years. The medical officer reserved his final opinion pending receipt of C.A. report, but the fact remains that he even did not give his tentative opinion. In view of the

same, this is a fit case to suspend the substantive sentence 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 Additional Sessions Judge, Jalgaon, in Special Case (POCSO) No. 56 of 2020, by the judgment and order dated 21.07.2022 to stand suspended. The applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety each in the like amount on following condition :-

(i) The applicant shall not enter the City of Jalgaon for next three years.

(c) The fees of the appointed Advocate for respondent No. 2 be quantified for Rs. 8,000/- by the Legal Aid Sub Committee, Aurangabad.

(R. G. AVACHAT)
JUDGE

mahajansb/