

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

**905 CRIMINAL APPLICATION NO.2869 OF 2023
IN
CRIMINAL APPEAL NO.767 OF 2023**

SHANKAR SURYABHAN JADHAV

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. S.A. Wakure, Advocate for applicant

Mr. A.M. Phule APP for respondent No.1

Mr. P.A. Bhosle, Advocate (appointed) for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.**

DATE : 26th OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application is filed by the original accused for suspending his sentence. He stood prosecuted in Special (POCSO) Case No.15/2015 and convicted by learned Special Judge, under POCSO Act, Osmanabad on 29.09.2020. He has been sentenced to suffer rigorous imprisonment for life and pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default to undergo rigorous imprisonment for six months for the offence punishable under Section 6 of the Protection of Children from Sexual

Offence Act, 2012. He has been further sentenced to suffer imprisonment for one year and pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer rigorous imprisonment for two months for the offence punishable under Section 506 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2 Heard learned Advocate Mr. S.A. Wakure for the
applicant/appellant, learned APP Mr. A.M. Phule for respondent No.1 and
learned appointed Advocate Mr. P.A. Bhosle for respondent No.2.

3 It is the prosecution story that the victim i.e. respondent No.2 in
this case is child. In order to prove her birth date prosecution has examined
PW 5 – the Headmaster of the school and the admission register of the school
has been produced. It appears to be the first school in which she had taken
admission for 1st standard. Though the learned Advocate appearing for the
appellant is raising the issue that the age of the child has not been proved,
there appears to be prima facie evidence.

4 There is also prima facie evidence in the form of testimony of the
victim herself which is then supported by medical evidence. It is also stated
that when the First Information Report was lodged she was pregnant of 17
weeks. After she had given birth to the child, DNA test has been conducted,

which is positive. The appellant and the victim are conferred to be the parents of the child. The point that has been raised by the learned trial Judge is delay in lodging the First Information Report. That can be considered at the time of final hearing. But the learned trial Judge has considered that the prosecution has explained the delay. In view of all these aspects we do not find this to be a fit case where the discretionary relief of suspending the sentence and releasing the appellant on bail should be exercised. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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