

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

7 CRIMINAL APPLICATION NO. 2944 OF 2023
IN APPEAL/719/2023 WITH APPEAL/719/2023

BALAJI GIRMAJI WARKARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Ms. Maya R. Jamdhade – Advocate for Applicant
Mr. R.D. Sanap – APP for Respondent No.1, State
Mr. V.B. Dhage – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 6th November, 2023

PER COURT :

1. Heard rival submissions.
2. Learned Counsel for applicant is seeking suspension of substantive sentence of imprisonment for five years imposed upon the applicant – accused in Special Case No.89 of 2021 vide judgment and order dated 05.07.2023 passed by the learned Special Judge, Nanded for the offence under Section 9(m) and 9(n) punishable under Section 10 of the Protection of Children from Sexual Offences Act.

3. According to her, the applicant has already undergone half of the sentence imposed upon him, since he was an under-trial prisoner. She pointed out that, there are material contradiction in the versions of victim in F.I.R., statement recorded under Section 164 of Cr.P.C. and the actual deposition before the learned Trial Court.

4. On the contrary, learned Counsel for the victim as well as learned A.P.P. strongly opposed the application on the ground that, the applicant – accused is in fact father of the victim and despite such relation he molested the victim. According to them, the Medical Officer has also deposed before the Court that, there was possibility of sexual violence.

5. Learned Counsel for applicant – accused also relied upon the judgment of Hon'ble Apex Court in the Case of **Kiran Kumar Vs. State of M.P.**, reported in *2001 AIR SCW 5130* on the aspect of suspension of sentence during the pendency of appeal. However, the said judgment is not in the case under P.O.C.S.O. Act, which is highly sensitive. Therefore, considering the object of P.O.C.S.O. Act and the relation

between applicant and the victim being of father and daughter, I am not inclined to suspend the substantive sentence of the applicant during the pendency of appeal, even though the applicant has undergone nearly half of the sentence. As such, the application stands rejected.

6. The applicant – accused is at liberty to move an application for early hearing of the appeal.

[SANDIPKUMAR C. MORE]
JUDGE