

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3157 OF 2023
IN CRIMINAL APPEAL NO. 737 OF 2023

1. Akash Gopinath Kale,
Age : 18 years, Occ. : Education,
R/o. : Sarangpur, Tq. Gangapur,
Dist. Aurangabad

... **Applicant/Appellant**
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Pachod,
Tq. Paithan, Dist. Aurangabad

2. X.Y.Z.

... **Respondents**
(Resp. No.2 – Ori. Complainant)

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Mr. S.B. Bhapkar – Advocate for Applicant
Mr. P.M. Kulkarni – APP for Respondent No.1, State
Ms. Rani R. Tandale (appointed) – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 31st October, 2023

ORDER :

1. The applicant – Akash Kale who is original accused No.1, is seeking suspension of substantive sentence of imprisonment imposed upon him by the Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.171 of 2017 vide judgment and order dated 02.08.2023. The applicant – accused No.1 has been

sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- in default to suffer S.I. for fifteen days.

2. Learned Counsel for applicant submits that, the applicant has already deposited the fine amount and he was on bail throughout the trial. According to him, the prosecution story is not at all believable and the complaint appears to be lodged at the instance of P.W. – 5, whose son in fact wanted to marry with the victim.

3. On the contrary, learned A.P.P. as well as learned Counsel for respondent No.2 – victim strongly opposed the application on the ground that, the learned Special Judge has convicted the applicant i.e. accused No.1 who performed main role in the offence. According to them, the evidence of victim is reliable and trustworthy and also supported by medical evidence on record.

4. On going through the record and proceeding as well as copies of depositions alongwith impugned judgment, it appears that the victim has deposed about the incidence effectively and her testimony remained unshattered in the cross – examination also. Further, there is supportive medical evidence on record. It appears

that the applicant alongwith other accused had taken the victim to the place of incident in the midnight and committed forceable sexual intercourse with her in revengeful attitude specially when she refused to marry with him. The argument of learned Counsel for applicant that he was falsely implicated in the crime is not at all convincible considering the prima-facie evidence against him on record.

5. Learned Counsel for applicant also tried to point out that, the record shows that, the incident had taken place on 09.07.2017 and victim was examined on 10.08.2017. Admittedly, on perusal of the record it appears that, at some places including the F.I.R. the incident shown to be occurred on 09.07.2017. However, in another statement of victim the incident appears to be occurred on 09.08.2017. Further, in the F.I.R. itself also the occurrence of offence is shown to be occurred on 10.08.2017 at 00:01 hours. Further, in the evidence of Medical Officer also it has come on record that, as per sexual assault history narrated by the victim, the incident appeared to be occurred at about 02:00 a.m. on 10.08.2017. In the Trial Court it was not the case or defence of the accused No.1 that, there was belated F.I.R. which was lodged after

about a month of the incident dated 09.07.2017. Thus, considering all these aspects it appears that, the learned Trial Court as well as investigation machinery must have committed typing mistake by mentioning that, the incident took place on 09.07.2017. Thus, considering the record as a whole there appears no ambiguity in respect of date of occurrence of the incident but it transpires that, the incident took place in the intervening night of 09.08.2017 and 10.08.2017.

6. Therefore, taking into consideration all these circumstances and heinous act of applicant in respect of exploitation of victim in revengeful manner, I am not inclined to suspend his sentence during the pendency of appeal and also his release on bail. Learned Counsel for the applicant relied upon the judgment of Hon'ble Apex Court on the ground of suspension of sentence in the case of **Bhagwan Rama Shinde Gosai and Ors. Vs. State of Gujarat** reported in (1999) 4 SCC 421, wherein it is observed that, *"application for suspension of sentence which is of limited duration, should be considered liberally unless there is statutory restriction"*. However the Hon'ble Supreme Court has also cautioned from time to time that, the cases against female child and women are to be

considered sensitively and, therefore, the aforesaid observation which was in relation to the case under Section 392 read with 397 appears non helpful in the present case.

7. In the result, the application stands dismissed.

8. The fees of learned Counsel appointed for respondent No.2 – victim be quantified as per rules.

[SANDIPKUMAR C. MORE]
JUDGE