

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3481 OF 2022
IN APEAL/566/2022 WITH APEAL/566/2022

ANNA ALIAS BHAURAO PRABHAKAR GADALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Murlidhar S Karad
APP for Respondent No.1 : Ms. V. N. Patil Jadhav
Advocate for Respondent No.2 : Mr. A. S. Awalgaonkar
(Appointed)
...

CORAM : S. G. MEHARE, J.

DATE : 16-06-2023

PER COURT :-

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

2. The applicant is seeking suspension of the sentence imposed on him by the learned Additional Sessions Judge, Ambajogai, District Beed, in Special (Child) Case No.30 of 2018, dated 22.06.2022, to suffer rigorous imprisonment for one half of the imprisonment for life and fine of Rs.10,000/- and in default of payment of fine, to suffer simple imprisonment for two months, for the offences punishable under Section 18 read with Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 as well as Section 511 read with Section 376(2) of the Indian Penal Code.

3. The learned counsel for the applicant has vehemently argued that the victim was tutored by her family. She had given admission in the cross-examination that she was bound to hear her parents. In fact, it was in the words that "*we are bound to hear our parents*". He would also argue that there is inconsistency in the statement of the victim. He would also argue that the applicant has been falsely implicated in the crime as there was a dispute between him and the father of the victim over money. He also referred to the cross-examination of the father of the victim and tried to convince the Court that there was a dispute over money. He also argued that there was no medical evidence. Hence, it cannot be believed that the offence has been committed. He further referred to the statement of the father of the victim under Section 164 of the Code of Criminal Procedure (for short, "Cr.P.C.") and pointed out that the accused was beaten and then stated that he committed a mistake. In fact, these facts were not referred to the witness in the cross-examination. The statements under Sections 161 and 164 of the Cr.P.C. are used to prove contradictions and omission. Further, he would argue that one half of the life imprisonment is for ten years as provided under Section 57 of the Indian Penal Code. Hence, it is short-term imprisonment. The applicant was 24 years old at the time of the incident and had no antecedents. Therefore, the sentence may be suspended.

4. Per contra, the learned counsel for the victim and the learned A.P.P. would argue that the victim was four years old at the time of the incident. She had no reason to lie against the accused. The victim is consistent from beginning to end. No material was brought in the cross-examination to disbelieve the victim or her parents. Since the prosecution has a case of manipulation of the victim's private part by the applicant/accused, there would be no question of having medical evidence. Law is settled that when the evidence of the prosecutrix inspires confidence, medical evidence is not essential, and the Court may convict the accused. No father would put the life of the child of four years at stake for a money dispute. Though the conviction is for a short period, in exceptional cases, the suspension of the sentence may be refused. It was a deliberate and intentional act committed by the accused. He took the victim in a field and committed the crime. Considering the facts and circumstances of the case in its entirety, there is no reason to show leniency to suspend the sentence. Therefore, the application deserves to be dismissed.

5. In a case of ***Bhagwan Rama Shinde Gosai and others Versus State of Gujarat, (1999) 4 Supreme Court Cases***, the Hon'ble Supreme Court dealt with the issue of suspension of sentence under Section 389 of the Cr.P.C. Paragraph No. 3 of the said judgment was relevant, in which it has been observed that when a convicted person is sentenced to a fixed period of

sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment, the consideration for suspension of the sentence could be of a different approach. But if, for any reason, the sentence of a limited duration cannot be suspended every endeavor should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases.

6. In view of the ratio laid down by the Hon'ble Supreme Court in the above case, when the accused has filed an appeal under any statutory right, the Court shall consider the prayer for suspension of sentence liberally. However, it is not an absolute rule. When there are exceptional circumstances, the Court may deny the suspension. The nature of the offence is one of the circumstances to consider the prayer of the accused as an exceptional circumstance. The POCSO Act has been enacted to protect children from sexual assault. A number of cases have been registered under the Act. In the case at hand, the victim was four years, and the accused was around 24 years old at the time of the incident. The victim has consistently deposed how the incident happened. The learned Special Judge inspired the confidence in

the victim. There appears to be no reason for the parents of the victim to involve the applicant in a false crime over the money dispute. The defence of the applicant does not appear probable. The parents of the victim caught the applicant red-handed and took him to the Police Station. The applicant did not have mercy towards a small child of four years.

7. Considering the evidence and the reasons recorded by the learned Special Judge, Ambajogai, the Court is of the view that the sentence is not liable to be suspended. The applicant may make a motion to expedite the hearing of the appeal if he so desires.

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

9. The learned counsel for the applicant prays for expediting the appeal as the applicant is a young boy of, 30 years old now.

10. The learned counsel for the applicant to supply the paper book print and then seek circulation for the final hearing.

11. 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**