



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APPA) No. 400 of 2023

ip @ Golu s/o. Fakira Targe...Versus... The State of Maharashtra, through PSO, PS Buldhana
(Rural) and another]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.B. Kalwaghe, Advocate for the applicant.
Mrs. M. Deshmukh, APP for respondent No.1/State.
Mr.J.S. Wankhede, Advocate for respondent No. 2.

CORAM : ANIL L. PANSARE J.

DATED : 25-10-2023

The applicant has filed present application under Section 389 of the Code of Criminal Procedure, 1973 (for short, "the Code") for suspension of sentence.

2. The applicant has been convicted for offence punishable under Section 363 of the Indian Penal Code (for short, "the IPC") and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/-, in default to suffer simple imprisonment for one month, he has been further convicted for offence punishable under Section 366-A of the IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/-, in default to suffer simple imprisonment for one month. The applicant is further convicted for offence punishable under section 6 of the Protection of Children from Sexual Offences Act (for short, "POCSO Act") and sentenced to suffer rigorous imprisonment for twenty year and to pay fine of Rs. 1,000/-, in default to suffer simple imprisonment for one month.

3. I have heard learned counsel for the applicant and learned APP for the State, at length.

4. The learned counsel for the applicant has invited my attention to the evidence of victim and her father, who have not supported the case of the prosecution. The victim had deposed that she herself eloped with the applicant-accused and stayed together at Pune for two months but did not indulge into physical relationship or sexual activities. Her father lodged the report. The prosecution in cross-examination has proved her statement given before police which indicates that the applicant and the victim have indulged into sexual activities. The learned judge appears to have relied upon this part of the statement alongwith the statement of the victim recorded under Section 164 of the Code. However, the learned counsel for the applicant has drawn my attention to an important aspect that the victim has deposed that her date of birth is 11.7.1999 and the incident had occurred on 2.4.2018 onwards. Thus he contend that the victim was major and therefore, the applicant could not have been convicted.

5. The learned trial Court has relied upon the school leaving certificate where she had studied upto 5th standard which indicate that her date of birth is 11.7.2002. This certificate is taken aid by the learned APP and learned counsel appearing for the victim to contend that the victim was minor at the time of

incident. However, the learned counsel for the applicant has rightly countered the aforesaid submissions by contending that this document being school leaving certificate, could not have been relied upon by the prosecution in view of the law laid down by the Hon'ble Supreme Court in the case of *P. Yuvaprakash..Vs.. State Rep. By Inspector of Police, 2023 SCC OnLine SC 846*.

6. Thus it appears that victim was major at the relevant time. In the circumstances, even if it is assumed that the victim indulged into sexual activities with the applicant, that being consensual, the ingredients of provisions of POCSO Act and the IPC may not be attracted. Of course, the authoritative finding can only be rendered after having detailed scrutiny of the evidence. The applicant therefore, has made out a case to revisit the entire evidence. Hence, following order:

ORDER

- i) The application is allowed.
- ii) The execution of sentence dated 15.3.2023 imposed upon the applicant by the learned Judge, Special Court, Buldhana in Special Case No. 34 of 2018 for the offences punishable under Sections 363, 366-A of IPC and 6 of POCSO Act is hereby suspended.
- iii) The applicant Pradip @ Golu s/o. Fakira Targe, shall be released on bail on he furnishing P.R. bond in

the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one or two sureties in the like amount to the satisfaction of the trial Court.

iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.

v) Registry to process the appeal for final hearing as per the rules.

(Anil L. Pansare, J.)

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