

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

CRIMINAL APPLICATION [APPA] NO.806/2022
IN CRIMINAL APPEAL NO. 181/2022.

Mangesh Mahadeo Chavan.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri V.K. Paliwal, Advocate for the Applicant/Appellant.
Ms. M. Deshmukh, A.P.P. for Respondent No.1.
Shri A.S. Band, Advocate [Appointed] for Respondent No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : MARCH 02, 2023.

Heard.

2. This is an application seeking suspension of sentence imposed vide judgment and order dated 09.08.2021 by the Special Sessions Judge, Akola in Special Criminal Case No.52/2017, whereby the trial Court has convicted the applicant /appellant for the offence punishable under Sections 363, 376[2][j] of the Indian Penal Code and Sections 3[a], 4, 5[j-ii][1][n] and 6 of the

Protection of Children from Sexual Offence Act, 2012 (POCSO). The maximum sentence imposed is for the offence punishable under Section of 6 of the POCSO Act, to undergo imprisonment for life, which shall mean imprisonment for the remainder of life.

3. The learned Counsel appearing for the applicant/appellant primely submitted that the prosecution has failed to establish the age of the victim and thus, the offence has not been made out.

4. With the assistance of the learned Counsel appearing for the parties, we have gone through the entire evidence. Particularly we have perused the evidence of victim from which prima facie it appears that both went to different places and stayed for months together, therefore, essentially age is a crucial aspect. In this regard, we have been taken through the evidence of two witnesses – one from Gram Panchayat who has issued a certificate, however, during the cross-examination, certain deficiencies have been

pointed out. The original register of birth entry or its copy has not been produced. Evidence of School Headmistress is led, however, it is the second school of the victim. Considering all these circumstances, we deem it appropriate to suspend the execution of sentence as in case the applicant/appellant succeeds in the appeal, the position would be irreversible. In view of that following order is passed.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The execution of substantive sentence imposed vide judgment and order dated 09.08.2021 by the Special Sessions Judge, Akola in Special Criminal Case No.52/2017, is suspended till the final disposal of the Criminal Appeal. The applicant/appellant – Mangesh Mahadev Chavan be released on bail on his executing P.R. bond in the sum of Rs.25,000/- with one or two sureties in

the like amount.

- [iii] The trial Court shall issue release warrant after ensuring entire payment of fine amount by the applicant /appellant.

JUDGE

JUDGE