



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 138 OF 2024
IN
CRIMINAL APPEAL NO. 90 OF 2023**

Chhabu @ Chhabau s/o Pandurang Akhade,
Age : 58 years, Occ: Labour,
R/o. Chincholi Kaldat,
Taluka Karjat, District : Ahmednagar.

....Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. N. S. Ghanekar – Advocate for the Applicant

Mrs. Uma S. Bhosale – APP for respondent/State

Mr. M. B. Sandanshiv – Advocate for respondent no.2/informant

.....

CORAM : R. G. AVACHAT

AND

NEERAJ P. DHOTE, JJ.

DATED : 27TH FEBRUARY, 2024

PER COURT : -

1. This Application is filed for suspension of substantive sentence awarded by the learned Special Judge vide Judgment and Order dated 06.01.2023 passed in Special Case No. 29/2022, convicting the Applicant/Appellant as follows : -

Sr. No.	Conviction under Section	Sentence	Fine
1.	376 (2) (I), (j), (n) of Indian Penal Code	Imprisonment for the remainder of his natural life.	Rs. 10,000/-, in default, simple imprisonment for six months.
2.	6 (1) of the Prevention of Children from Sexual Offences (Amendment) Act, 2019	Imprisonment for the remainder of his natural life.	Rs. 10,000/-, in default, simple imprisonment for six months.
3.	506 of Indian Penal Code	Rigorous imprisonment for one year.	--

2. Heard learned advocate for the Applicant/Appellant, learned APP for the respondent/State and learned advocate Mr. M. B. Sandanshiv for informant, who is the mother of victim.

3. Case of the Prosecution is that, Applicant/Appellant is the neighbour of the informant. He committed rape on the informant's child/victim thrice. After the child informed about the last incident to her mother, report was lodged and the Crime came to be registered.

4. We have perused the papers on record.

5. The advocate for the informant has relied on the following judgments.

- [i] Hariprasad alias Kishan Sahu Versus State of Chhattisgarh, 2023 SCC OnLine SC 1454
- [ii] Ananda s/o Mahadu Sawant Vs. The State of Maharashtra, DLD(Cri)-2024-2906
- [iii] Navnath Dattu Chavan v. State of Maharashtra, AIRONLINE 2021 BOM 2918
- [iv] Kashish Batra v. State, AIRONLINE 2021 DEL 440
- [v] X (Minor) Versus The State of Jharkhand & Anr., 2022 LiveLaw (SC) 194
- [vi] State of U. P. v. Sonu Kushwaha, AIR 2023 SC 3210

5.1. The aforesaid judgments are delivered on the facts and

circumstances of the respective cases. There is no dispute in respect of the legal position observed in the said judgments.

6. If we come to the case in hand, the first incident of rape as deposed by the victim in the house of the Applicant/Appellant is dated 10.01.2022 . According to the victim, similar act of rape was committed by the Applicant/Appellant prior to 2-3 months. Admittedly, the victim informed about the said act to her mother on 25.01.2022, which is almost after a period of 15 days. It is also not in dispute that the mother of the victim approached the Police and lodged report on 02.03.2022 i.e. after a period of 51 days from the date of last incident. The aforesaid Crime was registered on the basis of report lodged by the victim's mother. Admittedly, the Prosecution has not examined the mother of victim/informant. The only evidence is that of victim. It is true that the number of witnesses is not the requirement. However, the evidence of victim show that the informant i.e. her mother had a grudge against Sundar, who was the son of Applicant/Appellant on account of purchase of a Bungalow of the victim's maternal uncle by said Sundar. This indicates that the terms between the family of the victim and the Applicant/Appellant were not cordial. The evidence of victim further shows that the discussion had taken place in their house regarding lodging of the report.

7. It is true as contended by learned APP and advocate for the informant that the hymen of the victim was ruptured. It is needless to state that for rupture of hymen there can be more than one reason. Further, civil litigation between the parties has no bearing at this stage. The Applicant/Appellant is behind the bars for more than one and half years. The Appeal will not come up for final hearing in the near future. Considering all these aspects, we are of the opinion that there are arguable points in the Appeal.

8. Learned advocate for the informant submits that the Applicant/Appellant, if granted bail, shall be abstained from residing in the village where the victim is also residing. Considering the said request of the advocate for the informant, learned advocate for the Applicant/Appellant submits that the Applicant/Appellant will not reside in his residence which is close to the residence of the informant and rather he would reside away from that house or in his agricultural field.

9. Considering all the aforesaid aspects, we proceed to pass the following order: -

ORDER

(i) The Application is allowed.

(ii) The substantive sentence imposed upon the

applicant/Appellant, namely, Chhabu @ Chhabau s/o Pandurang Akhade, by the learned Special Judge vide Judgment and Order dated 06.01.2023 passed in Special Case No. 29/2022, is suspended during the pendency of the present Appeal.

- (iii) The Applicant/Appellant be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only).
- (iv) Bail before the Trial Court.
- (v) The Applicant/Appellant shall not reside in the residence which is close to the victim's house, until further orders.

10. Criminal Application is accordingly disposed of.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde