



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

**CRIMINAL APPLICATION NO. 524 OF 2024
IN APPEAL/564/2023**

. Nikhil Sangram Gaikwad
Age: 23 years, Occu.: Private Service,
R/o. Rawangaon, Tq.Udgir,
Dist.Latur.Applicant

Versus

1] The State of Maharashtra
2] X – VictimRespondent

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Advocate for Applicant : Mr. Sudarshan J. Salunke

APP for Respondent no.1 : Mr.N.D.Batule

Advocate for Respondent no.2 : Mr. Pooja K.Apache (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21 MARCH, 2024

PRONOUNCED ON : 02 APRIL, 2024

ORDER :-

1. Applicant convict, who has preferred appeal against judgment and order of conviction passed by the learned Special Judge-1, Udgir in Special Case (POCSO) No.4 of 2018, is praying for suspension of sentence and grant of bail during pendency of appeal.

2. Learned Counsel for the appellant would point out that for

offence under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (the POCSO Act), learned trial Court has awarded sentence of rigorous imprisonment for 7 years and 10 years respectively. According to him, at the outset, prosecution has not adduced any cogent and reliable evidence showing victim to be a minor on the date of occurrence. He further pointed out that infact FIR is also apparently late and only when victim was detected to be pregnant, complaint has been lodged. According to him, it is not at all a case of rape or sexual intercourse against will or wish or by force. That evidence of victim is also not inspiring confidence. That there is a good case on merits in appeal, however, much more time would be required to hear the appeal. Hence, he prays for suspending the sentence and grant of bail during pendency of appeal.

3. Learned APP as well as learned Counsel representing victim pointed out that victim was admittedly 14 years of age at the time of occurrence. That she was studying in 8th Standard. That there is allegation of forcible sexual intercourse by

threatening to kill. That victim has withstood extensive cross. That evidence about actual act of accused has remained unshaken. That there is DNA evidence confirming involvement of applicant. Learned APP pointed out that infact State has also preferred appeal for enhancing the sentence as for commission of offence under Section 6 of the POCSO Act, sentence cannot be awarded for rigorous imprisonment for less than 20 years. Therefore, for such reason also, learned APP and learned Counsel for victim strongly opposed application.

4. While answering above submission, learned Counsel for the appellant pointed out that incident in question is occurred prior to the amendment, which came into force and effect on 16-08-2019. Learned Counsel for the appellant relied on decision of Hon'ble Apex Court in the case of *Ramnik Singh v. Intelligence Officer, Dir. of Revenue Intelligence, (2017) 349 ELT 388*.

5. Considering the above submissions and on going through the operative part of the impugned judgment, learned trial Court seems to have held accused guilty for offence under

Sections 4 and 6 of the POCSO Act and 376(j) and 376(n) of the Indian Penal Code (IPC) and he has been sentenced to suffer rigorous imprisonment for 7 years and 10 years respectively and to pay fine. Against said judgment and order of conviction, accused convict Nikhil has preferred appeal, which is registered as Criminal Appeal No.564 of 2023. On going through the papers, it seems that crime was registered with Devani Police Station, Dist.Latur vide Crime bearing no.179 fo 2017.

6. On going through the papers on record, crime seems to be registered at the instance of Grandfather of the victim. According to him, victim is his granddaughter and she was studying in 8th Standard and was of 13 to 14 years of age. In 2017, victim, who was orphan, had come for marriage of her maternal uncle at Ravangaon and around September 2017, they noticed unusual size of victim's abdomen and was therefore taken to hospital where her pregnancy was revealed and on being questioned to that extent, she named accused for having forcible sexual intercourse with her by threatening to kill.

7. PW4 Victim also specifically deposed to that extent in

paragraph 3 of her substantive evidence. Apart from her, her aunt, uncles are deposing about her age and pregnancy. PW8 Dr.Changede, medical expert confirms pregnancy of 24 weeks and further victim delivering a female baby. DNA report exh. 85, 86 confirms involvement of applicant.

8. Therefore, with such quality of evidence, age of victim, her testimony, this Court does not find it a fit case to grant the prayers raised herein.

Citation relied by learned Counsel, is virtually on different aspect.

9. This Court, is ready to hear the appeal by fixing a date it being a jail appeal, if at all, applicant - appellant is so desirous of. No case is made out for suspension of sentence and grant of bail. Hence, following order is passed :

ORDER

Criminal Application No.524 of 2024 is rejected

(ABHAY S. WAGHWASE)
JUDGE