



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO. 683 OF 2024
IN APPEAL/150/2024

Bhagaji S/o Ganpat Katkar
Age: 71 years, Occu.: Nil,
R/o. Khamgaon, Tq.Phulambri,
Dist.Aurangabad.
(at present applicant is in central prison
Harsul, Aurangabad)

..Applicant
(Ori. Accused No.2)

VERSUS

1) State of Maharashtra
through Wadod Bazar Police Station,
Tq.Phulambri,
Dist.Aurangabad.

2) XYZ
R/o. Bormal Tanda, Tq.Soygaon,
Dist.Aurangabad.

..Respondents

...
Advocate for Applicant : Mr. Kachru Ananda Ingle
APP for Respondent no.1 : Mr.K.K.Naik
Advocate for Respondent no.2 : Mr. Ashutosh C. Sisodiya

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23 JULY, 2024

PRONOUNCED ON : 29 JULY, 2024

ORDER :-

1. This is an application for suspension of sentence and grant of
bail in consequence to judgment and order of conviction passed by

the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.421 of 2021.

2. In support of above relief, learned Counsel for applicant submits that applicant is 71 years of age. That he was held guilty for commission of offence under Sections 452, 376(2), 506 of the Indian Penal Code (IPC) and he has been sentenced to suffer rigorous imprisonment for ten years. That though there was charge under the provisions of POCSO Act, applicant is acquitted from the same. According to learned Counsel, allegations of committing rape are of April 2021 but FIR is lodged after six months that too by mother of victim. That initially allegations were against son of applicant but he is acquitted. Then subsequently, by way of supplementary statement, allegations were raised against present applicant. Conviction is based on the basis of DNA report, but carrier was not examined in trial Court and there are other good grounds on merits in appeal, which is yet to be dealt. According to him, appeal being recent one, there are not chances of immediately hearing the appeal. Learned Counsel emphasizes that apart from being of old age, applicant is already diagnosed as a blind person. There is medical record to that extent. Therefore, at this juncture, he is praying for relief of

suspension of sentence and grant of bail.

3. Learned APP strongly opposed application on the ground that serious offence is committed and guilt is proved beyond reasonable doubt. That on complete appreciation of evidence, trial Court had held applicant guilty. That DNA report has confirmed applicant to be father of child delivered by victim. Learned APP also pointed to the observations of the trial Court in paragraph nos.71, 74, 75 of the judgment. Precisely he has opposed application as serious crime has been committed.

4. Learned Counsel for the victim also fervently opposed application by submitting that guilt is proved beyond reasonable doubt. That apart from victim's evidence, there is scientific evidence also. That plea of blindness is not substantiated. That PW9 Shinde, in cross-examination denied that applicant was blind. For all above reasons, he also prays to reject the application.

5. After considering the submissions and on going through the papers, it seems that present applicant and his son were made to face trial vide Special Case (POCSO) No.421 of 2021. Trial culminated into acquittal of son but applicant is held guilty for offence under

Sections 452, 376(2) and 506 of the IPC and he has been sentenced to suffer rigorous imprisonment for ten years as is evident from operative part of the judgment and against such judgment appeal has been preferred.

6. For relief of suspension of sentence and grant of bail, two grounds are primarily pressed into service i.e. convict applicant to be around 71 years of age and secondly he to be visually impaired.

7. Visited testimony of victim. DNA report confirms that applicant has impregnated victim. Therefore, victim's evidence is finding support from scientific evidence. Considering the gravity of offence, merely because applicant is over 70 years of age and visually impaired, relief as sought cannot be granted. Here no case is made out for suspension of sentence and grant of bail. Accordingly, I proceed to pass following order :

ORDER

Criminal Application No.683 of 2024 is rejected.

(ABHAY S. WAGHWASE)
JUDGE