



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

**CRIMINAL APPLICATION NO. 720 OF 2024
IN
CRIMINAL APPEAL NO. 56 OF 2024**

Ashok Bajirao Ghadge,
Age : 42 years, Occu. : Agriculture,
R/o. Aherwadgaon, Tq. Beed, Dist. Beed.

...Applicant

VERSUS

The State of Maharashtra And Another

...Respondents

.....
Mr. Nilesh S. Ghanekar - Advocate for the Applicant
Mr. B. B. Bhise, APP for Respondent No. 1 – State
Ms. S. T. Kazi, Advocate for Respondent No. 2 – Victim
.....

**CORAM : R.G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

DATE : 17TH APRIL 2024

PER COURT :

1. This is the Application for suspension of substantive sentence imposed upon the Applicant/Appellant by the learned Additional Sessions Judge, Beed, vide Judgment and Order dated 30.09.2022 passed in Special Case Child Prot. No. 5 of 2016, convicting him for the offences punishable under Sections 376(2)(f)(i), 302 of the Indian Penal Code, 1860 and 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard the learned Advocate Mr. Ghanekar for the Applicant, Mr. Bhise, learned APP for Respondent No.1 - State and Ms. Kazi, learned Advocate for Respondent No.2 – Victim.

3. It is submitted by the learned Advocate for the Applicant that except the semen of 'O' blood group on the kurta of the Victim, there is no incriminating evidence against the Applicant. He submits that the offence was registered against unknown person. He submits that merely because the blood group of the Applicant is 'O', would not be sufficient to prove the Charge. He submits that the Applicant is behind the bars for more than eight and half [8 ½] years and he has good case on merit.

4. It is submitted by the learned APP that though the blood group of Victim is reported to be inconclusive, the semen of blood group found on the kurta of the Victim and the Applicant's blood group is one and the same i.e. 'O' and this evidence links the Applicant with the Crime in question. He submits that considering the nature of offence, the Application be rejected.

5. It is submitted by the learned Advocate for the Victim that the Applicant did not come forward during the search of the Victim. She submits that during the seizure of clothes of the Applicant, the white stains were noticed on his underpant. She further submits that as per evidence of Pws 1, 11 and 12, the applicant was seen with his wife and his brother's wife in

the field. She submits that, looking to the sensitivity of the matter, the application be rejected.

6. We have perused the evidence on record. Admittedly, there is no eye-witness to the incident. There is no evidence that the victim was lastly seen with the applicant/appellant before the incident. The mother of victim lodged the FIR against the unknown person. If we see the evidence of informant (PW1), her evidence which is incriminating in nature is an omission in her FIR, which runs as follows : -

“The body of my daughter was taken after 9.00 to 10.00 p.m. to Hospital. When the body of my daughter was taken out all the relatives had gathered. It is true to say that when I gave complaint it was filed against unknown person. On the next morning police again inquired me. The inquiry was made before the body of my daughter was brought. My statement was recorded in Court about 15 to 20 days. I did not stated in my complaint and statement before the Court that accused was having bad eye on me and I had given understanding to him and my sister. I did not stated in my complaint and statement before the Court that when I was going accused asked me where I was going. I did not stated in my complaint that accused had raped and killed my daughter. I did not stated in my complaint and statement before Court that accused came but sat in the cotton field of others, he did not came on the spot and ran away. I shad stated it to the police. I cannot assign any reason why police did not recorded such in my statement. After the police recorded my statement in night and till the recording of supplementary statement I did not received any information about the incident.”

7. Further, the evidence of panch witness does not show that the clothes of the victim were sealed after its seizure. The only incriminating circumstance is that the semen of blood group of ‘O’ was found on the kurta of the victim. Though the Applicant’s Blood Group was also ‘O’, *prima facie*

it would be a weak piece of evidence, as many persons have the Blood Group as 'O'. The applicant is behind the bars for more than 8½ years and there is no possibility that the Appeal would come up for hearing in the near future. Considering this material on record, we proceed to pass the following order : -

ORDER

- [i] Criminal Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant/Appellant by the learned Additional Sessions Judge, Beed, vide Judgment and Order dated 30.09.2022 passed in in Special Case Child Prot. No. 5 of 2016, convicting him for the offences punishable under Sections 376(2)(f)(i), 302 of the Indian Penal Code and 4 & 6 of the Protection of Children from Sexual Offences Act, 2012, 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) with one surety in the like amount.
- [iv] Bail before the Trial Court.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde