



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

**916 CRIMINAL APPLICATION NO. 665 OF 2023
IN APEAL/913/2023**

Shaikh Asef Shaikh Rajjak

....Applicant

Versus

The State of Maharashtra And Another

.....Respondent

.....

Advocate for Applicant : Shri. Sachin S. Deshmukh

Addl. PP for Respondent / State : Shri. S. D. Ghayal

Advocate for the Respondent No.2 : Mr. L. V. Sangit

.....

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

Dated : January 31, 2024

PER COURT :-

. Heard Shri. Sachin S. Deshmukh, learned Advocate for the Applicant and Shri. S. D. Ghayal, Addl. PP for the State

2. This is the Application for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Hingoli in Special Case Child Prot. No.07/2018 vide Judgment and order dated 30.09.2022 thereby convicting the Applicant / Appellant for the offences punishable under Section 366 r/w. Section 34 of the Indian Penal Code, under Section 376 (2)(m), 376(2)(j), 342, 506 of the Indian Penal Code, under Section 4 and 12 of the Protection of Children from Sexual Offences Act, under Section 3 (2)(v) and 3 (1)(w)(i) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. It is submitted by the learned Advocate for the Applicant / Appellant that the evidence on record show that the Applicant and the Victim were known to each other and there was consensual relationship between them. It is submitted that at the instance of mother of the Victim, the crime has been registered and the Applicant has been falsely implicated. Hence, he prays for suspension of sentence of the Applicant during the pendency of the Appeal.

4. It is submitted by the learned Addl. P.P for the State that the evidence of the Victim discloses the offence. It is submitted that other evidence on record corroborate the testimony of the Victim girl. Hence, he prays for rejection of the Application.

5. It is submitted by the learned Advocate for the Victim that the evidence on record clearly establishes the crime, therefore, the Trial Court has rightly convicted the Applicant / Appellant. He submits that, the testimony of the Victim support the case of the Prosecution.

6. We have perused the testimony of the Victim and the medical evidence on record. We find *prima facie* that the Applicant / Appellant is having a good case on merits and the possibility of

consensual relations between the Applicant and the Victim cannot be ruled out. Medical evidence rules out the possibility of sexual assault. At the time of the incident, age of the Victim was 17 years and age of the applicant was 21 years. The statement of the Victim was recorded after a period of 48 hours. The Applicant is behind the bars since last more than six (6) years. There is no possibility that the Appeal would come up for final hearing in the near future. In this view of the matter, we proceed to pass the following order:

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Hingoli in Special Case Child Prot. No.07/2018 vide Judgment and order dated 30.09.2022 on the Applicant / Appellant, namely, Shaikh Asef Shaikh Rajjak, is suspended during the pendency of the present Appeal.
- (iii) The Applicant / Appellant be released on bail on 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.
- (v) The Applicant / Appellant shall not change his residential address without intimation to the concerned Police Station.

(vi) The Applicant / Appellant shall not try to contact the Victim.

7. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP