



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

**CRIMINAL APPLICATION NO. 1047 OF 2023
IN APPEAL/312/2023**

Bhagwan S/o Vishwanath Waghmare
Age: 68 years, Occu.: Labour,
R/o.Dhakanwadi, Vadgaon, Tq.Pathardi,
Dist.Ahmednagar.

..Applicant
(Original Accused)

Versus

1) State of Maharashtra
Through PI., Pathardi Police Station,
Dist.Ahmednagar.

2) XYZ ..Respondents

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Advocate for Applicant : Mr. Uttam L. Telgaonkar (appointed)

APP for Respondent no.1 : Mr.D.R.Korade

Advocate for Respondent no.2 : Mr. B.N. Patil (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 25 SEPTEMBER, 2024

ORDER :-

1. By instant application, prayers are raised for suspension of sentence and grant of bail by virtue of conviction recorded by learned Judge, Special Court (POCSO Act), Ahmednagar in Special Case No.171 of 2017.

2. Mr.Telgaonkar, learned Counsel for applicant submitted that there is false implication. That at the time of incident, applicant was 63 years of age and now he is probably around 70 years of age. That FIR is by PW2 mother. That there is false allegation of sexual assault. That medical evidence does not support prosecution. That there are no blood stains to the undergarments. Therefore, there is a good case on merits in appeal. That sentence awarded is of ten years and appellant has almost undergone seven years imprisonment. That appeal being of 2023 and as it would take long time to be heard and decided, learned Counsel submits that relief as prayed be granted.

3. Both learned APP as well as learned Counsel for respondent no.2 opposed application by pointing out that victim is barely five years of age. That there is medical evidence suggesting assault and injuries. That there is prompt lodgment of complaint. That serious offence is committed. They both pointed out that there is breach of trust of the child by the applicant, who was her neighbour.

4. Perused the papers. It seems that present applicant was chargesheeted for commission of offence under Sections 376, 376(2)(i)(m), 452, 366-A, 506 of the Indian Penal Code (IPC) and under Sections 3 and 4 of the Protection of Children from Sexual Offences Act (POCSO Act). During trial, prosecution seems to have adduced evidence of in all nine witnesses. FIR seems to be at the hands of PW2 mother. After appreciating evidence, learned trial Court accepted prosecution version that accused committed offence under Sections 452, 366-A, 376(2)(i)(m), 506 of the Indian Penal Code (IPC) and Sections 3 and 4 of the POCSO Act and he has been sentenced to suffer imprisonment of 10 years, 7 years, 3 years, 1 year respectively for each of the offences vide judgment dated 04-04-2019.

5. Incident in question seems to have taken place on 01-04-2017 while informant mother was out of the house for agricultural work. Victim, five years' old girl was alone. PW4 Neighbour, who passed information to informant, reported that finding the victim crying, she was asked and the child reported that accused came in her house, lifted her, took her to his house,

removed her undergarments and slept over her person. Clothes of victim were said to be found blood stains. PW5 Dr.Bangar, medical expert has noted injuries on the person of victim. His evidence is discussed by the learned Judge in paragraph no.48 that he gave primary treatment for bleeding injuries i.e. to vagina and Doctor has noticed that there was tear at lower end of vagina. The tear was large in size and it was required to be sutured.

6. Therefore, considering such nature of allegations, this Court does not find it a fit case to extend benefit of either bail or suspension of sentence as prayed.

ORDER

- (i) Criminal Application No.1047 of 2023 is rejected.
- (ii) Fees of learned Advocates appointed for applicant and respondent no.2 respectively, is to be paid through the High Court Legal Services Sub Committee, Aurangabad as per Rules.

(ABHAY S. WAGHWASE)
JUDGE