



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

**CRIMINAL APPLICATION NO. 3087 OF 2024
IN APPEAL/690/2024**

- . Santosh Bhimrao Wahatule
Age: 44 years, Occu.: Service,
R/o.Navnath Nagar, N-11,
HUDCO, Aurangabad. ..Applicant
(Org. Accused)

VERSUS

1. The State of Maharashtra
(At the instance of SATARA Police
Aurangabad)
2. XYZ ..Respondents

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Advocate for Applicant : Mr. Abhaysinh K. Bhosle
APP for Respondent no.1 : Mr.N.B.Patil
Advocate for Respondent no.2 : Mr.K. P. Rodge (appointed)
(Through VC)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30 AUGUST, 2024

PRONOUNCED ON : 02 SEPTEMBER, 2024

ORDER :-

1. By invoking Section 389 of the Code of Criminal Procedure (Cr.P.C.) prayers are raised for suspension of sentence and grant of bail during pendency of the appeal.
2. It is submitted that applicant was chargesheeted and tried by the Special Court, Aurangabad in Special (POCSO) Case No.33 of

2019 for commission of offence under Section 354-A of the Indian Penal Code and Sections 7 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act). It is submitted that trial ended up into conviction and applicant has been sentenced to suffer rigorous imprisonment for four years and to pay fine. It is further submitted that after registration of crime itself, anticipatory bail was granted in favour of applicant. Taking this Court through the facts, it is submitted that present applicant was working as Branch Manager and he outraged modesty of a girl aged 16 years. It is further pointed out that there is no cogent, reliable proof in support of victim to be minor. There is difference in the name on birth certificate on record and that one given by the victim. That applicant has a good case on merits. That except testimony of victim and her mother, there is no corroboration from independent corner. That applicant has every hope in succeeding in appeal, however, it would take long time to be heard and hence, it is prayed that sentence be suspended and applicant be set at liberty by granting bail during pendency of appeal.

3. Learned APP as well as learned Counsel for respondent no.2 both strongly opposed application on the ground that serious offence has been committed. That on completion of trial, guilt has been

recorded. That victim is a a minor and her testimony had inspired confidence. That taking benefit of her loneliness, her modesty was outraged by the applicant. That she immediately reported to her mother. Therefore, they both opposed relief of suspension of sentence and grant of bail.

4. After considering the submissions of both the sides and after going through the papers, it is emerging that applicant was booked for offence under Section 354 of the IPC and under Sections 7 and 8 of the POCSO Act, vide Crime No.553 of 2018 registered at Satara Police Station, Aurangabad. It seems that present applicant was working as Branch Manager in a Co-operative Bank. Victim's mother had telephoned applicant and informed that she would visit Bank to open RD account. It is alleged that present applicant offered himself to come to their house and asked victim's mother not to come to Bank. Thereafter, applicant visited house of victim. Victim was alone while her mother had gone out of house to buy milk to prepare tea for applicant. At that time, victim's modesty has been outraged by the applicant i.e. touched her inappropriately and tried to kiss her. After arrival of her mother, victim has immediately reported to to her about the acts of accused. Mother claims that applicant fled from the spot. Therefore, there is testimony of both victim as well as her

mother and FIR seems to be promptly lodged. The contentions raised that, birth certificate of victim carries distinct name than that of victim and that victim is not proved to be a minor, are the issues which can be gone into at the time of full fledged trial. Here papers show that trial was rested on testimonies of four witnesses and has culminated into conviction of applicant i.e. on complete appreciation of evidence. Apparently, applicant is over 40 years of age whereas victim is a school going girl.

5. Therefore, considering the nature of charge and conviction upon full fledged trial, merely because applicant was beneficiary of anticipatory bail would not entitle him for the relief of suspension of sentence as well as grant of bail. Hence, no case is made out for invoking Section 389 of the Cr.P.C. Accordingly, I pass following order:

ORDER

- (I) Criminal Application No.3087 of 2024 is rejected.
- (II) Fees of the learned Counsel appointed for respondent no.2 is to be paid by the High Court Legal Services Sub Committee Aurangabad as per Rules.

(ABHAY S. WAGHWASE)
JUDGE