



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

**CRIMINAL APPLICATION NO. 3844 OF 2024
IN APPEAL/646/2020**

Vyankat s/o Bhaurao Yelge
Age: 62 years, Occu.: Labour,
R/o. Chandola, Tq.Mukhed,
Dist.Nanded.

..Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through City Police Station, Mukhed,
Tq.Mukhed, Dist.Nanded.

2. X.Y.Z.

..Respondents
(Res.No.2 is Orig. Informant)

...
Advocate for Applicant : Mr. V.D. Gunale
APP for Respondent no.1 : Mr.D.R.Korade
Advocate for Respondent no.2 : Ms.Pooja Kishor Apache (appointed)

...
CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 OCTOBER, 2024

PRONOUNCED ON : 14 OCTOBER, 2024

ORDER :-

1. Present application is for suspension of sentence awarded by learned Additional Sessions Judge-2, Kandhar, in Special Case (POCSO) No.9 of 2017 dated 11-02-2020 alongwith prayers for grant of bail during pendency of appeal.

2. Learned Counsel for the applicant submitted that there is false implication. That there is improper appreciation in recording guilt. He pointed out that implication is due to previous civil dispute. That false allegations are levelled after four months of alleged occurrence. According to him, there is no concrete, reliable, cogent and legally acceptable evidence on the point of age of victim. That moreover, victim was seen by applicant in compromising position with another boy of the village and for said reason also there is false implication. Learned Counsel submitted that victim was said to be pregnant, but DNA report rules out involvement of applicant. Therefore, applicant has a good case on merits in appeal, but as it would take long time to be heard and decided, learned Counsel prays for relief of suspension of sentence and grant of bail.

3. In answer to above, learned APP pointed out that apparently victim is a child as per definition of the POCSO Act. That there is overwhelming evidence including school admission register which shown date of birth of victim to be 15-03-2004 and incident of sexual intercourse was of February, 2017.

Therefore, at such time, it is submitted that victim was merely 13 years of age. That prosecution has established its case by adducing evidence of six witnesses including PW5 Dr.Mohan C. Gushinge, medical expert. That history was also reported to medical expert. That sexual intercourse was said to be under threat.

Learned counsel for victim also submitted that there was forcible sexual intercourse by accused, who is her cousin uncle. According to her, mere negative DNA report would not eclipse victim's evidence.

For all above reasons both of them opposed application.

4. After hearing above submissions and after going through the papers, it seems that applicant was tried for commission of offence under Sections 376(2)(f) of the Indian Penal Code (IPC) and under Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act) by Additional Sessions Judge-2, Kandhar.

Precise case of prosecution is that victim studied in 8th standard. When her parents were out of house and she was

alone, it is alleged that, accused, who is her cousin uncle and was alone at his house, called her to his house and when she went to his house and watching television, he closed the door from inside and he made victim to sleep on bed and asked her to allow him to have sexual intercourse.

5. Victim, who has stepped in the witness box and has narrated about the incident, that while she was alone and called by accused at his house, accused had sexual intercourse with her. She has deposed that second time also, accused came at midnight to her house and had sexual intercourse with her.

6. As regards to age of victim is concerned, her date of birth is said to be 15-03-2004. Learned trial Judge has held her to be a child on the strength of school admission extract exh.36 as well as on the strength of forensic medical evidence. Therefore, mere DNA report to be negative or occurrence being reported after 4 months is no good ground to extend the relief when apparently applicant was relative and cousin uncle of victim. Here, there is apparent sexual exploitation and breach of trust.

Two episodes are narrated by the victim.

7. Therefore, considering the gravity of the offence, this Court does not find it a fit case to grant relief as prayed.

Accordingly, I proceed to pass following order :

ORDER

(i) Criminal Application No.3844 of 2024 is rejected.

(ii) Fees of the learned Counsel appointed for respondent no.2 / victim is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(ABHAY S. WAGHWASE)
JUDGE