



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

**906 CRIMINAL APPLICATION NO. 4120 OF 2024
IN APEAL/919/2024**

Pravin Haridas Bhume

VERSUS

The State Of Maharashtra And Another

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Mr. Nilesh S. Ghanekar - Advocate for Applicant

Mrs. S. N. Deshmukh - APP for Respondent/State

Mr. Nitin S. Kadarale – Advocate for Respondent No. 2

...

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

DATED : 10TH DECEMBER, 2024

PER COURT : -

1. This is the Application for suspension of sentence and bail. The Applicant/Appellant is convicted by the learned Special Judge (POCSO Act), Aurangabad, in Special Case Child Protection No.209/2019, by the Judgment and Order dated 23.04.2024. By that judgment, the Applicant/Appellant and two more accused have been convicted for the offences punishable under Sections 376(2)(n) and Section 506 of Indian Penal Code and Section 5(1) read with Section 6 of the Protection of Children from Sexual Offences, 2012. They have been sentenced to suffer imprisonment for life, which means remainder of their natural life with fine of Rs.1,00,000/- each, in default, to undergo S.I. for three months for offence under Section 6 of POCSO Act.

They have been further sentenced to undergo R.I. for a term of one year with fine of Rs.1,000/- each, in default, to undergo S.I. for 15 days for offence under Section 506 of I.P.C. No separate sentence has been awarded for offence under Section 376(2)(n) of IPC.

2. The learned Advocate for the Applicant/Appellant submits that, Accused No. 1 – Vitthal @ Dnyaneshwar Pandurang More and Accused No. 3 – Sunil Indalsingh Dangar have been granted bail and their sentences are suspended by this Court by order dated 14.08.2024. He submits that, though the DNA report shows that the Applicant/Appellant was the biological father of the child born to the victim, he submits that the evidence on record go to show that there was correction in the date, month and the year of birth of the victim in the vaccination card issued by the Primary Health Center, which formed the basis to record her date of birth in the school record. He submits that due to the said correction, the age of victim comes in doubt and, therefore, it is not conclusively established that the victim was a child / minor at the relevant time. He submits that, the Appeal would take its own time. He submits that the FIR was lodged after the pregnancy was detected. He submits that the Applicant/Appellant was aged 22 years at the relevant time. He submits that the Application be allowed.

3. The Application is opposed by the learned APP. She submits that the said document is a public record and though there is correction,

it would not come to the aid of the Applicant at this stage. She submits that, the ground of parity would not be available to the Applicant/Appellant. She submits that, the DNA report shows that the Applicant/Appellant was biological father of the child born to the victim. She submits that the correction in the date of birth is rightly made. She submits that the Application be rejected.

4. Learned Advocate for Respondent No. 2 – Victim opposes the Application. He supports the contentions of the learned APP. He submits that the victim be sent for Ossification Test for determination of the age. He submits that the Application be rejected.

5. We have scrutinised the evidence of the victim and other evidence on record. According to the victim, the applicants and the co-onvicts committed rape on her when she was alone in her maternal uncle's home, when her maternal uncle and aunt were not present. Admittedly, in the report (Exh.32) lodged by the victim, she named only accused no.1 - Dnyaneshwar @ Vitthal (applicant) as the person who committed rape on her. It is also not in dispute that said report was lodged after her pregnancy was realised. It is further not in dispute that in her statement under Section 164 of the Code of Criminal Procedure, recorded after her report, she named accused no.1. Thereafter, the investigating machinery filed charge-sheet against accused no.1. It is further not in dispute that subsequently, the DNA report was received,

which showed that accused no.2 was the biological father of the fetus. Thereafter, supplementary statement of the victim was recorded, in which she named accused nos.2 and 3 and one Gopal as the persons, who committed rape on her. Thereafter, her second statement under Section 164 of Cr.PC. was recorded, in which she named only accused nos.2 and 3 and excluded Gopal.

6. The evidence of the Investigating Officer would show that the victim had named different accused persons at different stages. We reproduce the relevant paragraph from the evidence of the Investigating Officer, who was examined as PW 10, as under:-

“5. I had filed charge-sheet against accused no.1. Thereafter, I had received DNA report. From the same it reveals to me accused no.1 is not biological father of baby of victim. So, I had again made enquiry from victim. I had recorded supplementary statement of victim. In it she has stated that accused no.2 and 3 and Gopal Khokad by taking advantage of her simpleton nature and by threatening her had established physical relations with her during the said period on 2-3 occasions. In view of the said statement, I made request to the court again record statement of victim under section 164 of Cr.PC. Accordingly, again her statement under section 164 Cr.PC. had been recorded. In it, she had stated names of accused no.2 and 3 only and not stated the name of Gopal Khokad.....”

7. We have perused the record. The overwriting in the date, month and the year of birth of the victim on the vaccination card is *writ large*. It is not in dispute that the said corrected date of birth formed the basis to record the date of birth of the victim in the school record. It is needless to state that the burden was on the prosecution to establish that the victim was a Child at the relevant time, by bringing on record the concrete evidence in respect of the date of birth of the victim. Here,

prima facie the evidence in the nature of vaccination certificate in respect of date of birth of the victim is not concrete. The overwriting on the same, *prima facie* makes the said material valueless. As regards the Ossification Test of the victim is concerned, the said point is kept open and would be considered at the time of final hearing.

8. The Applicant is behind the bars for last more than seven (7) months. The Applicant/Appellant was young i.e. 22 years of age, at the relevant time. The Applicant was on bail during the trial. The Appeal would take its own course and hence, we proceed to pass the following order.

ORDER

- [i] The application is allowed.
- [ii] During pendency of the appeal, the substantive sentence of imprisonment imposed against the Applicant/Appellant by the learned Special Judge (POCSO Act), Aurangabad, in Special Case Child Protection No.209 of 2019, vide the judgment and order dated 23.04.2024, to stand suspended.
- [iii] The Applicant/Appellant be released on bail, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde

Signed by: Sandeep Gulabrao Punde

Designation: PS To Honourable Judge

Date: 11/12/2024 17:48:31