

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1739 OF 2023
IN
CRIMINAL APPEAL NO.540 OF 2023**

Jagnu Dhanju Chavan ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Advait U. Shukla i/by A. Q. Auti, for the Applicant/Appellant.
Mrs. M. R. Tidke, APP for the Respondent/State.
Mr. Kushalkumar D. Shukla, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 22nd FEBRUARY, 2024

PC.

1. Heard the parties.
2. This Application is filed for suspension of sentence awarded by the learned Special Judge (POCSO) Act, Solapur dated 04.02.2023 in Special Case No.169 of 2021.
3. It is the case of the prosecution that on 25.04.2021, the present accused committed sexual assault on the victim aged 10 to 11 years. This Applicant called the victim to his house. He removed her clothes and also his own clothes and caught hold the victim and committed sexual assault in bathroom. Maternal uncle of the victim came there and caught hold the accused and beaten and took him to

the Police Station. On trial, learned Judge found the accused guilty for the offence under Section 9(m) punishable under Section 10 of the POCSO. From the other charges, he came to be acquitted. The sentence imposed is of five years for the offence under Section 9(m) punishable under Section 10 of the POCSO Act and pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for one month.

4. Learned advocate for the Applicant submits that the Applicant is 76 years of age. Since the date of his arrest i.e. 25.04.2021, he is in jail. He has thus completed more than 50% of the sentence. On merits he submits that father and maternal uncle of the victim both were declared hostile as they didn't support the case of the prosecution. He further pointed out from the evidence of the victim and other witnesses that ten days prior to the alleged incident, there was quarrel between the present Applicant and father of the victim. This Applicant had also lodged complaint against the father of the victim in the Police Station. He submits that because of the animosity, the Applicant is falsely implicated in this case. He thus prays for suspension of sentence and release of the Applicant on bail.

5. Learned APP opposes the Application stating that the offence is serious offence, as the victim was minor girl. Had the maternal uncle of the victim not present, there was possibility of serious offence taking place and opposes the bail.

6. Learned advocate for Respondent No.2 also vehemently opposes the Application.

7. On going through the evidence of maternal uncle and father of the victim, it is seen that they have not supported the case of the prosecution. Even the victim in her cross-examination admitted that there was previous quarrel between her father and the accused. Even on merits, there is arguable case made out. One more fact that needs to be considered is that the Applicant is in jail since 25.04.2021 i.e. for two years and ten months out of sentence of five years. Considering all above factors, this Court is inclined to allow the Application. Hence the following order :-

- i) The Application stands allowed.
- ii) The sentence awarded by learned Special Judge (POCSO) Act, Solapur dated 04.02.2023 in Special Case No.169 of 2021 stands suspended.
- iii) Applicant be released on bail on furnishing PR bond of Rs.15,000/- with one surety and subject to payment of fine, if not paid.
- iv) Applicant shall not contact the victim girl or any other witnesses.

- v) Applicant shall not enter into the vicinity area, where the victim girl is residing.
 - vi) Applicant shall keep informed his contact details including his mobile number etc. to the concerned Police Station.
8. The Application stands disposed of.

[KISHORE C. SANT, J.]