



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APPA) NO.397 OF 2024 IN
CRIMINAL APPEAL NO.209 OF 2024**

KAMLAKAR BHAUJI RAUT

VS

THE STATE OF MAHARASHTRA THR. PS GONDPIPARI TAH.GONDPIPARI
DIST.CHANDRAPUR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.N. Ali, Advocate for the applicant/s

Mr. Anup Badar, A.P.P. for the non-applicant/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 12.07.2024.

1. The present application has been filed for suspension of sentence. The present applicant, who is the original accused, faced the trial for the offence punishable under Section 376, 376(2)(f), 376(2)(n) and 506 of the IPC as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO Act). The learned Special Judge, under the POCSO Act, Chandrapur vide judgment dated 16.12.2023 convicted him for the offence under section 6 of the POCSO Act as well as under Section 376 and 376 (2)(f) of the IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.5,000/- in default to suffer R.I. for 12 months. He has been acquitted for the offence under Section 376(2)(n) and Section 506 of the IPC and Section 4 of the POCSO Act.

2. Heard the learned Advocate for the applicant and the learned APP for the State.

3. Copies of the depositions have been made available and the learned Advocate for the applicant has taken us through those depositions. It is pointed out that PW-6 Dr. Shital, who is the Medical Officer, had examined the girl and had issued Medical Report. However, the Medical Report which was exhibited to the extent of signature only and therefore, the said Medical Report cannot be considered. There was no corroboration to the testimony of the victim. He further points out the deposition of the PW-2 victim, wherein she has given some admissions to show that there were persons present when the girl was allegedly dragged by the applicant. But the prosecution has not examined those witnesses, who had allegedly seen the victim is being dragged by the applicant. He further submits that since the Medical Report has not been exhibited, the Court cannot rely upon the DNA Report and CA Report. Therefore, the learned Trial Judge erred in convicting the accused on the sole testimony of the minor. He therefore, prays for suspension of sentence.

4. The learned APP strongly opposes the application and submits that the evidence has been properly scrutinized by the learned Special Judge. There is substantive evidence of the victim on record, who is admittedly a minor. There was no question of false implication of the applicant by the minor.

5. At the outset, the point which is not in favour of the applicant is that he was not on bail throughout the trial; and

secondly, in order to prove the charge, the victim has been examined, who has told her age about 14 years at the time of deposition, which came to be recorded on 13.06.2022 and the incident had allegedly taken place on 02.10.2020. That means on the date of incident she was around 12 years of age. If her age as per the deposition is considered, it also appears that the preliminary questions were asked and thereafter, upon coming to the conclusion that she understands the meaning of oath, oath came to be administered to her. The accused had an opportunity to cross-examine her. As regards the alleged admissions regarding the presence of the other witnesses are concerned, the questions appear to be in the form of suggestions. Non-examination of the witnesses *per se* may not give a reason for suspending the sentence, when the victim herself has been examined. Further, if at all there is any contradiction in ocular evidence and medical evidence, then generally ocular evidence would prevail. It is then also required to be considered as to whether the certificate was necessarily to be exhibited, when the Medical Officer, who had conducted the examination, has deposed about the results she had found at the time of examination of the girl. The nature of the medical evidence as well as DNA and CA Report is corroborative in nature. At this stage, the sole testimony of the minor is also believed by the trial Court.

6. Recently the Hon'ble Supreme Court in decision in *Special Leave Petition (Criminal) Diary No.27298/2024 dated 05.07.2024 (Bhupatji Sartajji Jabraji Thakor Vs. The State of*

Gujrat), has held as follows :

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word "palpable" and the expression "apparent on the face of the record"”.

7. Therefore, taking into consideration all these aspects, no case is made out for suspension of sentence. The application stands **rejected**.

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8. In view of the fact that the appeal is already admitted and R and P was called, the Registry to take upon the procedure for preparation of the paper-book.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]