



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.950 OF 2022

[State of Maharashtra ..Vs.. Atul Manohar Nikhade]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr A. B. Badar, Advocate for Applicant/State.

CORAM : SMT. M. S. JAWALKAR AND
M. W. CHANDWANI, JJ.

DATE : 5th DECEMBER, 2024.

1. Heard.

2. The State has filed an appeal against the judgment and order dated 28.12.2021, passed by the learned Special Judge, Special Court (POCSO), Chandrapur in Special (POCSO) Case No.90 of 2018, whereby the respondent has been acquitted of the offence punishable under Sections 376(AB), 376(2)(n) of the Indian Penal Code and under Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. It is submitted on behalf of the State that the respondent is the uncle of victim girl, who was approximately five years old at the time of the alleged incident. The respondent used to insert his finger in the vagina of victim. When, the victim complained to her mother about pain in her vagina, she was examined by a lady doctor, and thereafter, when an inquiry was made with her, she took the name of respondent. Accordingly, the first information report came to be lodged against the respondent

and the trial was conducted.

4. The contention is that though, the victim could not depose about insertion of finger by the respondent, but she has specifically deposed about touching by the respondent to her vagina, which also constitutes the offence. But, this aspect has not been considered by the learned Trial Court.

5. Considering the submission as well as the impugned judgment and depositions, we find that there is sufficient material to grant leave to file appeal. Accordingly, permission is granted.

6. The criminal application is disposed of.

CRIMINAL APPEAL (ST) NO.5873 OF 2022

7. Heard.

8. **Admit.**

9. Call record and proceedings.

10. The learned Special Judge, Chandrapur, is directed to take action under Section 431 of the Bharatiya Nagarik Suraksha Sanhita, 2023. If, the accused is brought in pursuant to Section 431 of BNSS, he shall be released on bail on furnishing surety to the satisfaction of the learned Special Judge, Special Court (POCSO), Chandrapur.

(M. W. CHANDWANI, J.)

(SMT. M. S. JAWALKAR, J.)