



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

**Criminal Application [APPA] No.1299 of 2023**

**in**

**Criminal Appeal No.809 of 2023**

*Ashok s/o Mehatarlal Nandeshwar*

*vs.*

*State of Maharashtra, through the Officer-in-Charge, Police Station Amgaon,  
District Gondia and another*

-----  
*Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.*

*Court's or Judge's Orders*

-----  
*Mr. S.N. Nandeshwar, Advocate for the Applicant/Appellant.  
Mr. S.A. Ashirgade, A.P.P. for Non-Applicant/Respondent No.1.*

**CORAM : M.W. CHANDWANI, J.**

**DATE : 16<sup>th</sup> JANUARY, 2024.**

By the present application, the applicant is seeking suspension of substantive sentence passed in Special Child Case No.8/2020. The appellant has been convicted for the offence punishable under Section 7 read with Section 8 of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act) and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-. The applicant has also been convicted for the offence punishable under Section 9(m) read with Section 10 of the POCSO Act and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/-. The applicant has been further convicted for the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-. In default of fine amount, the appellant has to undergo further rigorous imprisonment for three months. All the sentences will have to run concurrently.

02] Heard the learned Counsel for the applicant as well as the learned Additional Public Prosecutor for the State.

03] It is contended on behalf of the learned Counsel for the applicant that the applicant has been falsely implicated in this case. According to him, when the applicant did not allow the victim to pluck limes from a tree, the mother of the victim quarreled with the applicant and on the next day, a false complaint has been lodged by her with the Police Station against the applicant. According to him, the evidence and the cross-examination go to substantiate the claim of the applicant. The applicant has fair chances to succeed in the appeal. Hence, he prayed for suspension of sentence and grant of bail.

04] *Per contra*, the learned A.P.P. for the State vehemently submits that there is a statement of the victim, which was recorded when she was seven years old at the time of alleged crime. The victim has in categorical term deposed about the molestation done by the applicant and the trial Court has rightly appreciated the evidence. There is no chance for the applicant to succeed in the appeal. Hence, he sought rejection of the application.

05] With the able assistance of the learned Counsel for the applicant as well as the learned A.P.P. for the State, I have scanned the evidence. There are suggestions to the mother of the victim on the line of implication of the appellant, just because he did not permit the victim to pluck limes. Perusal of the cross-examination of the victim goes to show that she has admitted in her cross-examination that her mother has told her not to tell the incident of limes to the Court. Therefore, the case appears to be arguable one.

06] The applicant has been sentenced for a fixed term of five years, which is relatively shorter. The appeal may not be heard in near future and in case of acquittal, the position will not be reversible. In this peculiar circumstance, a case is made out for suspension of sentence. Hence, the following order :

I. The application is allowed.

- II. Pending the appeal, the substantive sentence passed by the learned Special Judge, Gondia in Special Child Case No.8/2020, vide judgment and order dated 11/1/2/2023, shall remain suspended.
- III. The applicant be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount before the trial Court.
- IV. The applicant to pay the fine amount, if not paid.
- V. The applicant shall appear before the Court as and when directed.
- VI. The application is disposed of accordingly.

**JUDGE**

*\*sandesh*