



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

**905 CRIMINAL APPLICATION NO.93 OF 2024
IN
CRIMINAL APPEAL NO.29 OF 2024**

**LAKHAN BHIKAN NARWADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicant : Mr.S.J.Salunke
APP for Respondent-State : Mrs.A.S.Mantri
Advocate for Respondent no.2 : Mrs.Sayali Tekale
...

WITH
CRIMINAL APPEAL NO. 29 OF 2024

...

**CORAM : ARUN R. PEDNEKER, J.
DATE : 16.07.2025**

P.C. :

1] The present application has been filed by the applicant for suspension of substantive sentence imposed on the applicant in Special Case No. 247/2022, by order dated 23.11.2023, by learned Special Judge (POCSO Act), Aurangabad. The applicant has been convicted thus:

The applicant is sentenced to undergo imprisonment for a term of twenty years and with fine of Rs.20,000/- and in default to undergo simple imprisonment

for a period of three months for the offence punishable under Section 4 (2) of the POCSO Act.

The applicant is sentenced to undergo imprisonment for a term of one year and with fine of Rs.1,000/- and in default to undergo simple imprisonment for a period of 15 days for the offence punishable under Section 506 of IPC.

2] The maximum punishment imposed on the applicant is of 20 years. The applicant is in custody since last 3 years and 1 month. It is stated that at the time of alleged incident, age of the victim was of 14 years and the age of the applicant was of 22 years.

3] The learned counsel for the applicant submits that date of incident is 20.06.2022 and the FIR is registered on 21.06.2022. It is alleged in the FIR that the applicant had committed forceful sexual intercourse on the victim. The victim was examined by the Medical Officer on 22.06.2022 at 1.30 a.m. He further submits that the conviction recorded by the Sessions Court against the present applicant is erroneous. He further submits that the prosecution witnesses are not the witnesses of sterling quality. The case of the prosecution is that the victim was residing on second floor of the building and the applicant was residing on the ground floor of the building. It is

alleged that the victim was forcefully taken from the 2nd floor to the bathroom on ground floor and the applicant had committed forceful sexual intercourse on her in the bathroom and the size of the bathroom is of 2 x 3 ft. He further submits that in the FIR, it is alleged that she has stated the incident of sexual assault is of 20.06.2022 whereas in the medical history, she has stated the incident of sexual assault is of 21.06.2022. He further submits that reports of chemical analyzer do not support the prosecution case. He further submits that in the cross examination of the victim, she has stated that the similar incident was also happened with her elder sister and FIR was also registered against 4-5 persons. He further submits that in cross examination of mother of the victim, she has stated that she had not given similar kind of reporting pertaining to her elder daughter. However, in the later part of cross-examination she has admitted the same. He further submits that the age of the victim was not proved. There is no injury on the person of victim and the medical evidence does not support the prosecution case.

4] *Per contra*, the learned APP has pointed out that PW-1 has stated that the bathroom was in front of the house of the applicant-accused and it was 3 x 6 feet and the incident narrated is possible. The learned APP further submits that the age of the victim was appropriately established in terms of the documents of the school record and that the Headmaster of the school has been examined.

5] Considered the rival submissions. The alleged solitary incident is of forceful sexual assault on the victim and the victim was examined within 30 hours. However, there is no injury on the person of the victim and that the medical evidence on the aspect of rape also does not support the prosecution case. FSL reports are also negative. The incident is alleged to have happened in the day time in a building premises where the applicant and the victim are residing. The sister of the victim had also filed similar type of FIR. Considering the said fact, the applicant has arguable case. The applicant is in jail for 3 years and one month. The appeal may take substantial time to hear. In view of the same, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentence imposed on the applicant in Special Case No. 247/2022, by order dated 23.11.2023, by Special Judge (POCSO Act), Aurangabad, stands suspended till the final hearing and disposal of Criminal Appeal.

iii] The applicant be released on bail on furnishing P.R.bond of Rs.20,000/-, with one or two sureties in the like amount. Bail before the trial Court.

- iv] Criminal Application is disposed of accordingly.
- v] It is also clarified that the observations made in this order are limited only for the purpose of deciding the present Application.
- vi] Mrs. Sayali Tekale, learned counsel appointed by this Court to represent the cause of respondent no.2, shall be paid fees of Rs.10,000/- by the High Court Legal Aid Services Sub-Committee, Aurangabad.
- vii] Appeal is **admitted**. On admission, the learned APP waives notice for respondent-State.

[ARUN R. PEDNEKER]
JUDGE

DDC