



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

**903 CRIMINAL APPLICATION NO.107 OF 2025
IN
CRIMINAL APPEAL NO.19 OF 2025**

Gautam Shivcharan Chauhan,
Age: 25 years, Occu: Labour,
R/o. Walmik Nagar, Bhusawal,
Taluka – Bhusawal, District – Jalgaon

.... Applicant

Versus

The State of Maharashtra and Anr.

.... Respondents

.....

Mr. Patil Vijay Bhalerao, Advocate for the Applicant

Mr. M. K. Goyanka, APP for Respondent No.1

Ms. Suvarna Zaware, Advocate (Appointed) for Respondent No.2 - Victim

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CORAM : NEERAJ P. DHOTE, J.

DATE : 15.10.2025

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant / Appellant by the learned Additional Sessions Judge, Bhusawal, District Jalgaon, vide Judgment and Order dated 08/11/2024, passed in Special Case Child Protection No.15/2016, convicting the Applicant / Appellant for the offences punishable under Section 376(2)(n) of the Indian Penal Code, 1860 and Section 4(1) of the Protection of Children From Sexual Offences Act, 2012 and sentencing him to suffer Rigorous Imprisonment for ten (10) years and to pay fine of Rs.5000/-, in default of payment of fine, to suffer Rigorous Imprisonment for two (02) months.

3. The case of Prosecution, in brief, is that, on 28/08/2015, the Informant and the Victim had gone to attend the marriage ceremony, for which, they got up early in the morning. The Victim-girl told the Informant that, she would wait for her outside the house. When the Informant got ready and came out of the house, she did not find the Victim. The Victim was not traced despite search. The Informant lodged a missing report. On 25/09/2025, the Police traced the Victim along with the Applicant, and they both were brought to the Bhusawal Police Station. On the statement of the Victim, Crime came to be registered against the Applicant. After Investigation, the Applicant was charge-sheeted, convicted and sentenced after the trial.

4. Heard the learned Advocate for the Applicant, the learned APP for Respondent No.1 – State and the learned Advocate Ms. Zaware for Respondent No.2 – Victim. Perused the copies of evidence and the Judgment made available.

5. According to the learned Advocate for the Applicant, the age of Victim was above sixteen (16) years and was not proved as required under the law. He submits that, the evidence on record clearly establishes that, the Victim eloped with the Applicant and they had consensual relation. The Applicant was on bail during the trial and being a term sentence, the sentence be suspended and the Applicant be released on bail.

6. The Application is opposed by the learned APP for Respondent No.1 – State and the learned Advocate Ms. Zaware for Respondent No.2 – Victim. They submit that, the Victim was a minor, and therefore, her consent was immaterial. They submit that, the medical evidence supports the evidence of the Victim. The learned Advocate for Respondent No.1 - Victim relied on the Judgment in **Jamnalal Vs. State of Rajasthan and Another, in Special Leave Petition (Criminal) No.69/2025**, wherein, the order of suspension of sentence of the Appellant therein granted by the High Court was quashed and set aside on the facts of that case. They submit that, the Application be rejected.

7. As regard the age is concerned, the evidence is that of the Informant, who is the mother of the Victim, and a copy of birth certificate is brought on record. If the said evidence is accepted, the age of the Victim was over sixteen (16) years of age. The learned Trial Court has recorded the clear finding that, the relations between the Victim and the Applicant were consensual. Though the evidence of the Medical Officer, who examined the Victim, shows that, the hymen was ruptured and old hymenal tag was present, her evidence indicates that there were no external injuries on the Victim. Her evidence further shows that, the Victim stated before her that, no intercourse took place during that period when she was residing with the Applicant at Delhi. This evidence goes contrary to the evidence of the Victim, wherein, she deposed of forceful sexual intercourse by the Applicant

with her. Therefore, it is clear that, the evidence of the Victim does not find corroboration. The sentence awarded by the learned Trial Court is the term sentence of ten (10) years. The Applicant was on bail during trial. He is behind the bars for a period little over one (01) year. The Record and Proceeding and Paper-book is awaited, and therefore, the Appeal is not likely to be heard finally in the near future. Hence, I am inclined to pass the following order:

ORDER

- [I] Criminal Application is allowed.
- [II] The substantive sentence imposed upon the Applicant, namely, Gautam Shivcharan Chauhan, by the learned Additional Sessions Judge, Bhusawal, District Jalgaon, vide Judgment and Order dated 08/11/2024, passed in Special Case Child Protection No.15/2016, is hereby suspended till the final disposal of the Appeal.
- [III] The Applicant be released on bail on furnishing P.R. bond of Rs.15,000/- [Rupees Fifteen Thousand] with one surety in the like amount.
- [IV] The Applicant shall co-operate in early disposal of the Appeal.
- [V] Bail before the Trial Court.
- [VI] For this Application, fees of the learned Advocate Ms. Suvarna Zaware appointed to represent Respondent No. 2 / Victim is quantified at Rs.15,000/- [Rupees Fifteen Thousand], which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- [VII] Criminal Application stands disposed off accordingly.