



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL APPLICATION NO. 201 OF 2024 IN APEAL/575/2024
WITH
CRIMINAL APPEAL NO. 575 OF 2024

DATTA SHIVAJIRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. C.C. Deshpande a/w. Mr. B.N. Magar
APP for Respondent/State : Mr. P.P. Dawalkar
Advocate for Respondent 2 : Mr. Shrinivas Kulkarni (appointed Through
Legal Aid For R. No. 2)
...

CORAM : ARUN R. PEDNEKER, J.
Dated : July 09, 2025

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP and learned counsel appearing for respondent No. 2/informant.
2. The present application is filed for suspension of substantive sentence imposed by the trial Court vide judgment and order dated 9.10.2023 in Special Case No. 43/2022 on the applicant, the relevant portion is as under :-

ORDER

- 1)
- 2) Accused Datta S/o Shivajirao Jadhav, Age 34 years is hereby convicted for penetrative sexual assault under section 3(B) punishable under section 4 of POCSO Act and he is sentenced to suffer 20 years Rigorous imprisonment and fine of Rs.2000/- and in default of fine he shall suffer Simple imprisonment of one month vide section 235(2) of Cr.P.C.
- 3) Further he is hereby convicted for committing sexual assault with minor victim girl for an offence punishable under section 8 of POCSO Act and he is sentenced to suffer Rigorous Imprisonment for 3 years and fine of Rs.2000/- in default of fine

he shall suffer Simple Imprisonment of 1 month vide section 235(2) of Cr.P.C.

4) Further he is hereby convicted for an offence punishable under section 3(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and he sentenced 3 years Rigorous Imprisonment and fine of Rs.2000/- in default of fine he shall suffer Simple Imprisonment of 1 month vide section 235(2) of Cr.P.C.

5) All these sentences shall run concurrently.

6)"

3. The case put forth against the applicant is that on the date of incident, the applicant came to the house of informant in drunken condition and slept near the girl of informant, who was 12 years old and the applicant has inserted his finger in her private part. As such, immediately on the next date, FIR is registered. The applicant was convicted for the above offences and sentence of 20 years rigorous imprisonment is imposed on the applicant/appellant.

4. The learned counsel for the applicant submits that the victim minor girl was send for medical examination, but informant along with victim have refused for medical examination of the victim and the same is noticed by the trial Court in para No. 33 of the above judgment, which is as under :-

"33. Further it appears that in the present matter in hand victim minor girl was send for medical examination but she along with her mother denied for medical examination. No doubt there is no medical certificate on record but considering the age of minor victim girl and testimony of her mother if there is no any thing brought on record by the defence for lodging such type of complaint against him. So in the present matter in hand the testimony of minor victim girl is sufficient to hold that on the day of incident accused at about 2.00 p.m. slept near the minor victim girl. He inserted his hand in her nicker and he also inserted his finger in a

vagina of minor victim girl.”

5. The learned counsel submits that the only evidence available against the applicant is the statement made by the victim and there is no medical evidence available on record to prove the penetrative sexual assault. The learned counsel submits that the applicant and informant/mother of the victim were live in relationship. The informant was not staying with her husband as he had left the informant and the victim was a child born to the informant from the husband of the informant. The learned counsel submits that the informant was demanding property from the applicant and due to property dispute, the present case is filed against the applicant and during the investigation the victim has refused to undergo the medical examination. The applicant is in custody since last three years and three months. The learned counsel therefore prays to suspend the substantive sentence imposed on the applicant and release on bail.

6. The learned APP has strongly opposed the application by submitting that the trial Court has rightly convicted the applicant and there is strong evidence available against the applicant. The learned APP therefore prays to reject the application filed for suspension of substantive sentence and releasing the applicant on bail.

7. Having considered the submissions made above, it appears that after the incident, the informant and victim has denied for medical examination of the victim and there is no reason mentioned to why the victim was not examined medically. The appeal will take own time to conclude and the applicant is behind bars for last three years and three months. In view of the above, I deem it appropriate to suspend the substantive sentence imposed on the applicant and release him on bail.

8. In view of the above, the above substantive sentence imposed on the applicant is suspended. The applicant be released on bail on such terms and conditions to the satisfaction of the trial Court. The application stands disposed of.

9. Legal Services Sub Committee, High Court, Bench at Aurangbad shall pay fees of Rs.10,000/- to the learned counsel appointed for the respondent No. 2 in application filed for suspension of substantive sentence.

10. Appeal is admitted. The learned APP waives service of notice for respondent/State.

11. Call R. & P.

(ARUN R. PEDNEKER, J.)

ssc/