

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

CRIMINAL APPLICATION NO. 915 OF 2025
IN
CRIMINAL APPEAL NO. 163 OF 2025

Rohit S/o Randhir Patil,
Age : 23 yrs., Occu: Education,
R/o. Chobali, Tq. Ahmedpur, Dist. Latur.

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....
Mr. Sudarshan J. Salunke – Advocate for the Applicant
Mr. S. K. Shirse – APP for the State
Ms Bhagyashree S. Kamble h/f Mr. G. K. Sontakke – Advocate for
Respondent No. 2 / Victim
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CORAM : NEERAJ P DHOTE, J.

DATED : 29TH SEPTEMBER, 2025

PER COURT : -

1. This is an Application for Suspension of Substantive Sentence imposed upon the Applicant by the learned Special Judge, Ahmedpur, *vide* the Judgment and Order dated 29.01.2025, by which the Applicant/Appellant has been convicted for the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six years and to pay fine of Rs. 30,000/-, in default, to undergo rigorous imprisonment for one year, and for offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, and sentenced to suffer rigorous imprisonment for five

years and to pay fine of Rs. 30,000/-, in default, to undergo rigorous imprisonment for one year.

2. The Prosecution's case, in brief, is that on 14.01.2024, in the afternoon, when the Informant and her daughter (Victim) were having lunch at their house, the Applicant/Appellant came there and bowed down before the Informant. When the Informant asked him the reason for coming to their house, the Applicant/Appellant told her that he and the Informant's daughter are going to leave the house and accordingly, the Applicant/Appellant took the Informant's daughter with him. When the Informant's son came home and inquired about the Victim, the Informant started searching the Victim. Since the Victim was not traced, the report was lodged with Ahmedpur Police Station. The Applicant/Appellant and the Informant's daughter stayed together at Alandi from 15.01.2024 to 19.01.2024, where the Applicant/Accused committed sexual intercourse with her. The Investigating Machinery could trace both of them and apprehended. On the basis of the statement of the Informant's daughter, Section 376(2)(n) of the IPC and Sections 4 and 8 of the POCSO Act came to be included to the Crime. After investigation, the Applicant/Appellant came to be charge-sheeted and after the Trial, he came to be convicted as referred to above.

3. According to the learned Advocate for the

Applicant/Appellant, the Informant's daughter eloped with the Applicant/Appellant due to love affair. The age of the Victim is not proved by the Prosecution. The Victim was more than 17 years of age when she left the house. Since there was no evidence in respect of the sexual intercourse, the learned Trial Court acquitted the Applicant/Appellant from the charge of rape. The Applicant is behind the bars for more than one (1) year and nine (9) months, and since the Appeal will take its own time, the sentence be suspended and the Applicant be released on bail.

4. The Application is vehemently opposed by the learned APP for the State and the learned Advocate appearing on behalf of the Prosecutrix. They submit that, the age of the Victim is not seriously disputed. A Birth Certificate of the Victim has been exhibited, which was not challenged by the Defence. The Victim stated entire story before the learned Magistrate. There is presumption under the POCSO Act. There were antecedents of having committed similar types of offences. They submit that the Application be rejected.

5. Insofar as the age of the Informant's daughter is concerned, the Prosecution relied upon the Birth Certificate, which was exhibited as Exh. 25 in the testimony of the Informant's daughter i.e. Victim. No witness is examined to prove the Birth Certificate of the Victim. It is

needless to state that, mere exhibiting the document will not be sufficient. Admittedly, the Victim was not the author of the Birth Certificate. Except this exhibited document, there is no evidence in respect of the age of the Victim.

6. The evidence of the Victim shows that, at the relevant time i.e. 14.01.2024, she was studying in 11th Std. Though she deposed that, by threatening to kill her parents the Applicant/Appellant took her with him to Alandi, her evidence in the cross-examination shows that she eloped with the Applicant/Appellant. In her cross-examination, it has come that the Applicant/Appellant did not have physical relations with her after he took her with him.

7. The medical evidence does not show any injuries on the person of the Victim. So far as the antecedents are concerned, the impugned Judgment itself shows that the Applicant/Appellant was acquitted of earlier Crime. He has been acquitted of the offence of rape. The sentence imposed upon the Applicant/Appellant is a term sentence i.e. 6 years and 5 years, respectively, for offences punishable under Sections 363 of the IPC and 8 of the POCSO Act. The Applicant/Appellant undertakes to deposit the fine amount before his release. The Applicant/Appellant is behind the bars for more than one (1) year and (9) months. There is no likelihood that the Appeal would

come up for final hearing in the near future. In this view of the matter, I am inclined to allow the Application and hence, I pass the following order : -

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the learned Special Judge, Ahmedpur, *vide* the impugned Judgment and Order dated 29.01.2025 passed in Special Case (POCSO) No. 6/2024, is hereby suspended till the final disposal of the Appeal. In the meantime, the Applicant-Accused be released on bail on his furnishing personal bond of Rs.30,000/- [Rupees Thirty Thousand] with one surety in the like amount.
- [iii] The Applicant shall co-operate in early disposal of the Appeal.
- [iv] Bail before the Trial Court.

[NEERAJ P. DHOTE]
JUDGE

SG Punde