



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPLICATION NO. 1356 OF 2024
IN
CRIMINAL APPEAL/633/2024

SHARAD SAKHARAM BHIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Avinash R. Borulkar
APP for Respondent/State: Mrs. V. N. Patil Jadhav
Advocate for Respondent No.2 :
Mr. Joslyn A. Menezes (*Appointed*)

...
WITH
CRIMINAL APPEAL NO. 633 OF 2024

CORAM : ARUN R. PEDNEKER, J.

DATE : 23.07.2025

P.C. :

1] Heard.

2] The present application is filed by the applicant for suspension of substantive sentence imposed on him in Special Case (POCSO) No.29/2020, dated 10.04.2023, by the learned Special District Judge and Additional Sessions Judge-2, Amalner, District Jalgaon. The applicant has been convicted thus:

"1] The accused Sharad Sakharam Bhil, Age 21 years, Occu Labour, R/o. Narne, Tal. Dharangaon, Dist –

Jalgaon is hereby convicted u/s. 235(2) of Cr.P.C. for committing offence punishable u/s.363 of IPC and accused do undergo rigorous imprisonment of 7 years.

2] The accused is held guilty for committing offence punishable u/s. 376(2)(n) of IPC but no sentence is awarded.

3] The accused is hereby convicted u/s. 235(2) of Cr.P.C. for committing offence punishable u/s. 4 of POCSO Act for rigorous imprisonment of 12 years.

4] The accused is hereby convicted u/s. 235(2) of Cr.P.C. for committing offence punishable u/s. 5(j)(ii) of POCSO Act for rigorous imprisonment of 12 years.

5] No fine is awarded as legal aid is provided to accused.

6] Benefit of set off provided u/s. 428 of Cr. P.C. be given to accused for committing offence punishable u/s. 363 of Indian Penal Code and committing offence punishable u/s. 4 and 5(j)(ii) of POCSO Act.

7] The clothes of victim and accused seized in this offence being worthless be destroyed after appeal period is over.

8] The substantial sentence to be undergo concurrently.”

3] The learned counsel for the applicant submits that the applicant is arrested on 21.06.2020 and continues to be in jail for a period of about 5 years. The applicant has been imposed maximum sentence of 12 years and also all other sentences to run concurrently. He also submits that as the victim delivered the child and the DNA matched with the applicant, the applicant is held to be the biological

father of the child. He submits that relations were consensual, however, he submits that the victim's birth date was not established. The victim's birth was established on the basis of the school record produced from the school, where the victim was admitted to 5th standard and the birth date record in school was taken from the earlier school. He submits that there is no sufficient proof to establish that the victim was minor at the time of offence and submits that on all other aspects there were consensual relations, which can be seen from the evidence.

4] Having seen paragraph no.31 of the Judgment of the trial court, there is some doubt as regards the establishment of date of birth of the victim, the present Criminal Appeal No.633 of 2024 is **admitted**.

5] Considering that the applicant has already undergone about 5 years imprisonment, sentence can be suspended.

6] Considering the above, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentence imposed on the

applicant in Special Case (POCSO) No.29/2020, dated 10.04.2023, by the learned Special District Judge and Additional Sessions Judge-2, Amalner, District Jalgaon, 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 to the satisfaction of the trial court.

iv] Bail before the trial Court.

7] Mr. Joslyn A. Menezes, learned counsel appointed to represent cause of the victim / respondent no.2 shall be paid fees of Rs.10,000/- by the High Court Legal Services Sub-committee, Aurangabad.

[ARUN R. PEDNEKER]
JUDGE

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