



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

914 CRIMINAL APPLICATION NO. 1405 OF 2025
IN APEAL/271/2025

Govind Munjaba Rudre

.. Applicant

Versus

The State of Maharashtra And Another

.. Respondents

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Shri. A. L. Kanade, Advocate for the Applicant

Shri. S. M. Ganachari, APP for the Respondent No.1 – State.

Ms. Falguni Kulkarni, Advocate for Respondent No.2 (appointed)

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CORAM : NEERAJ P. DHOTE, J.

DATE : SEPTEMBER 03, 2025

PER COURT :-

. This is the Application for Suspension of Sentence imposed by the learned Additional Sessions Judge, Ambajogai, Tal. Ambajogai, Dist. Beed in Sessions Case No.142/2021 decided on 07.04.2025 convicting the Applicant for the offences punishable under Sections 376 (2)(l) and 376 (2)(n) of the Indian Penal Code (for short, 'I.P.C.') and sentencing him to suffer Rigorous Imprisonment for a period of Twenty (20) Years and fine of Rs.15,000/- (Rs. Fifteen Thousand), in default to suffer Rigorous Imprisonment for a period of Three (3) Months AND to suffer Rigorous Imprisonment for a period of Twenty (20) Years with fine of Rs.15,000/- (Rs. Fifteen Thousand), in default to suffer Rigorous Imprisonment for a period of 15 (fifteen) Days, respectively.

2. The Prosecution's case, in brief, is as follows:

2.1. The Victim and the Applicant / Appellant are relatives. The Victim was Intellectually Disabled and was residing with her parents at Wantakli, Tal. Parli Vaijanath, Dist.Beed. The Mother of the Victim noticed that the Victim was pregnant. Therefore, the Victim was taken for medical examination. The Doctor, on medical examination of the Victim, found her to be pregnant. The Victim told her Mother that the Applicant Raped her. The Victim's Mother lodged the Report with the concerned Police Station against the Applicant and Crime bearing No.196/2021 came to be registered against the Applicant for the offences punishable under the above referred sections of the I.P.C. On completion of the investigation, the Applicant came to be Charge-sheeted. After the full-fledged Trial, the Applicant came to be convicted by the learned Trial Court by the above referred Judgment and Order.

3. It is submitted by the learned Advocate for the Applicant that the Victim was major by age and had studied up to 8th Std and was able to understand the things. There are no medical papers to support the case of the Prosecution that the Victim was Intellectually Disabled. The evidence on record goes to show that the Psychiatric Assessment Report prepared by the Prosecution Witness No.8 – Dr. Krushna Balasaheb

Kadam was based on the Report prepared by the Clinical Psychologist, who was admittedly not examined. The evidence of the Victim nowhere shows that the sexual intercourse was done without her consent. The evidence on record goes to show that it was the consensual act between the Applicant and the Victim. The Applicant is aged 23 years and taking education and was on bail during the Trial. He further submits that the Appeal would take its own time and therefore, the sentence may be suspended.

4. It is submitted by the learned APP that there is sufficient evidence available on record to show that, the Victim was Intellectually Disabled and was not in a position to give consent. The evidence of PW No.8 – Dr. Krushna Balasaheb Kadam shows that, the Victim was suffering from the Mild Mental Retardation and her IQ was found to be 51, whereas the IQ of normal person ranges from 90 to 110. The patients like the Victim are unable to assess what will be the consequences of particular act. The Applicant was related to the Victim and he took disadvantage of the mental state of the Victim and committed the heinous crime. The evidence of the Brother of the Victim shows that, the Victim was under medical treatment for her Intellectual Disability. The learned Trial Court has rightly appreciated the evidence on record and rightly passed the impugned Judgment and order and therefore, the Application be rejected.

5. It is submitted by the learned Advocate for the Respondent No.2 - Victim that, the evidence of the Mother and Brother of the Victim shows that the sexual act which was performed by the Applicant on the Victim was without her consent. The Victim was not in a position to understand the things. The case of the Prosecution was well corroborated and the learned Trial Court has rightly convicted and sentenced the Applicant and no case was made out for suspending the sentence and the Application be rejected.

6. Though the evidence of the Mother and the Brother of the Victim who were examined as PW Nos.3 and 4, respectively, shows that the Victim was Intellectually Disabled and she was taking medical treatment, admittedly there are no medical papers brought on record to corroborate their evidence that the Victim was suffering from intellectual disability and receiving treatment. The evidence of the Investigating Officer shows that, she had not included the medical treatment papers of the Victim in the Charge-sheet. There is no corroborative medical evidence to support the Prosecution's case that, the Victim was suffering from Intellectual Disability and was taking previous treatment.

7. The material evidence in respect of the intellectual disability of the victim is that of Witness No.8 – Dr. Krushna Balasaheb Kadam, who was the Class-I Psychiatrist at the Sasoon Hospital, Pune. According to him, the mental retardation are of the following types i.e. mild retardation, moderate retardation, severe retardation and profound retardation. He examined the Victim as she was referred for psychiatric assessment. The day to day examination and IQ assessment of the Victim was done and on examination it was revealed that, the Victim was having mild mental retardation. His further evidence goes to show that, the IQ test of the Victim was performed by the Clinical Psychologists. In his cross-examination, he admits that the documents on the basis of which the Report was prepared, were not before the Court as the same were not collected by the I.O. Apart from the history given by the Victim's parents, his Report was based on the I.Q. assessment made by the Clinical Psychologist, who was not examined by the Prosecution before the learned Trial Court. He further admits that as per the World Health Organization guidelines it is advisable to carry out other intelligent test in addition to the BKT test, though it was not mandatory according to him.

8. The Clinical Assessment Report prepared by PW8 – Dr. Krushna Balasaheb Kadam was primarily based on the Clinical Psychologist IQ test, which was not brought on record. The said Clinical Psychologist

was not examined before the learned Trial Court. Therefore, *prima facie* the case of the Prosecution in respect of Intellectual Disability of the Victim does not appear to be well founded. There is no dispute on the aspect that the Victim was major by age at the relevant time i.e. at the time of commission of the offence. There is no dispute that, the DNA Report shows the Applicant as the Biological Father of the foetus. There is also no dispute that the Applicant and the Victim are distantly related to each other. The note above the evidence of the Victim, made by the learned Trial Court shows that, the Victim had properly answered the Court's questions, therefore, her evidence was recorded. The evidence of the Victim shows that, she used to sleep in one room and her Mother used to sleep in other room and the Applicant used to commit sexual intercourse with her. According to the Victim, the Applicant committed sexual intercourse with her for 9 to 10 times and therefore, she became pregnant. However, in her Cross-examination, it has come that since beginning she used to sleep with her Mother. Though the Mother and Brother of the Victim deposed of forcible Rape on the Victim by the Applicant, they are not the eye witness to the Act.

9. In view of the above discussed evidence on record, the contention of the learned Advocate for the Applicant that, it was the consensual act between the Victim and the Applicant cannot be brushed aside lightly. The Applicant was on bail during the Trial. The Appeal is

not likely to be heard in the near future. In view of the above, the case of Suspension of Sentence is made out. Hence, the following order.

ORDER

- (i) The Application is allowed.
 - (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Ambajogai, Tal. Ambajogai, Dist. Beed in Sessions Case No.142/2021 decided on 07.04.2025 convicting the Applicant for the offences punishable under Sections 376 (2)(l) and 376 (2)(n) of the I.P.C., is suspended during the pendency of the present 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 hearing of the Appeal.
 - (v) Bail before the Trial Court.
 - (vi) For this Application, the fees of the learned Advocate Ms. Falguni Kulkarni appointed to espouse the cause of Respondent no. 2 – Victim is quantified at Rs.10,000/- (Rupees Ten Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.
10. Criminal Application stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)

GGP