

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

3 CRIMINAL APPLICATION NO. 1544 OF 2025
IN APEAL/303/2025

Kishor Alias Keshya Vijay Pawar

VERSUS

The State Of Maharashtra And Another

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Mr. A. D. Khot - Advocate [appointed] for the Applicant

Mr. A. D. Wange - APP for State

Miss Karishma S. Sarin – Advocate [appointed] for Respondent No.2

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CORAM : NEERAJ P DHOTE, J.

DATED : 24TH NOVEMBER, 2025

PER COURT : -

1. This is an Application for suspension of substantive sentence imposed by the learned Special Judge, Under POCSO Act, Ahmednagar, in Special Case No. 166 of 2022, by the Judgment and Order dated 13.02.2025. The operative order of the said Judgment reads as under: -

“ORDER

1. *Accused Kishor @ Keshya Vijay Pawar is hereby convicted under the provisions of Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under u/s, 363, 376, 376A, 376AB, 376(2)(i) (j), 307 of IPC and under Section 6 of POCSO Act.*

2. *He is convicted under the provisions of Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 6 of POCSO Act. He is sentenced to suffer R.I. for 20 years and fine of Rs.10,000/ (Rs. Ten Thousand only) in default to suffer S.I.for two months.*

3. *He is convicted under the provisions of Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 363 of IPC. He is sentenced to suffer R.I. for 3 years and fine of Rs.1,000/ (Rs. One Thousand only) in default to suffer S.I.for one month.*

4. *He is convicted under the provisions of Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 307 of IPC. He is sentenced to suffer R.I. for 10 years and fine of Rs.10,000/- (Rs. Ten Thousand only) in default to suffer S.I. for two months.*

5. *Accused is in jail. He is entitled for setoff u/s. 428 of Cr.P.C. for the period already undergone by him.*

6. *All the substantive sentences shall run concurrently.*

7. *Muddemal property, if any, be disposed of, after appeal period is over.*

8. *Copy of judgment be given to the accused free of cost.*

9. *The judgment is dictated and pronounced in open court."*

2. The Prosecution's case, in brief, is that, on 18.06.2022, when the parents of the Victim left home, the Victim and her siblings were present at home. In the afternoon, when the Victim's parents reached home, the Victim was not found. The Victim's sister informed them that, the Appellant took the Victim with him. The parents started search of the Victim. They found Victim in a naked condition nearby the area. The Appellant was found half naked. The Appellant was strangulating the Victim. After the Victim's parents reached the spot, the Appellant fled. The Victim was bleeding from her vagina. The Victim informed about the incident to her Mother. The mother of the Victim approached the Police and lodged the Report. The Victim was medically examined. Investigation was done. The Appellant was Charge-sheeted for the offence punishable under Sections 363, 376AB, 376 (2)(i)(j), 376(A) and 307 of IPC and for the offences punishable under Sections 4

and 6 of the POCSO Act. After the full-fledged trial, the Appellant came to be convicted as above.

3. Heard the learned Advocate for the Applicant/Appellant, learned APP for the State and the learned Advocate for Respondent No. 2 / Victim. The learned Advocate for the Applicant/Appellant places on record the paper-book supplied to him by the office of the High Court Legal Services Sub Committee, Aurangabad Bench. The same is taken on record. They took me through the relevant evidence on record.

4. The learned Advocate for the Applicant/Appellant cited the Judgment in **Pradeep v. The State of Haryana, [2023] 10 S.C.R. 1021**, in respect of the guidelines to be followed before recording the evidence of a minor. The said Judgment show that, the Judicial Officer is duty bound to ask preliminary questions to the minor with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. In the case at hand, the testimony of the Victim, who is examined as PW4, show the noting that the learned Trial Court took the necessary precautions and also put certain questions to her. The evidence show that, for the first time, the Victim was brought for the evidence before the learned Trial Court on 06.06.2024. However, she was found frightened and not able to state anything or even not able to speak anything. It was observed that, the Victim is not

competent to give the deposition before the Court and, therefore, her examination was deferred. The Victim was thereafter examined on 10.10.2024 in the questions and answers form. The noting show that, the learned Trial Court put the questions to the Victim to ascertain whether she can understand the sanctity of her oath.

5. The evidence of the Victim though do not depose in so many words or have not given the exact sequence of the incident, she deposed against the Appellant to some extent. The Victim deposed of removing her pant by the Appellant and arrival of her mother on the spot. The testimony of the Victim's Mother, who is examined as PW1, show that, she saw that after she returned home in the afternoon on the day of the incident, the Victim was not found in the house. They started searching for her. She heard the Victim crying nearby and when they went towards the said direction, saw the Victim in naked condition and also the Appellant without pant. Her evidence show that, blood was oozing from the urinal place of Victim. Though PW11, one of the Medical Officers, who had an occasion to examine the Victim after the incident, deposed only of swelling and abrasion around the neck of the Victim and he nowhere deposed about the sexual assault. However, the evidence of PW5 – Medical Officer, who also examined the Victim after the incident, deposed that there was vaginal bleeding, swelling and redness on *libia majora* and *libia minora* and pressure abrasion around

neck of the Victim. Though in the medical papers there is no reference of provisional opinion, the evidence of this Medical Officer show that he deposed before the trial Court that he had given the opinion about physical assault on the Victim. In the cross-examination of this Medical Officer, it has come that the said swelling and redness to the libia majora can be possible, if the finger or any other object is inserted.

6. The above evidence indicate that, the testimony of the Victim and her Mother is well corroborated by the medical evidence. There is evidence of PW7 – Medical Officer that the Applicant/Appellant was capable of performing sexual intercourse. Even if at this stage the aspect of attempting to murder is ignored in view of the inconsistency in respect of article by which the Victim was strangled, *prima facie*, there is evidence on record in support of conviction under the provisions of POCSO Act. The sentence is of twenty [20] years imprisonment and the Applicant/Appellant is behind the bars for a period of little over three (3) years. Considering the evidence on record, no case exists for Suspension of sentence. Hence, I pass the following order.

“ORDER

- [i] The Application for suspension of sentence is rejected.
- [ii] For this Application, the fees of the learned Advocate Mr. A. D. Khot appointed to represent the Applicant is quantified at Rs. 15,000/- [Rupees Fifteen Thousand] and the fees of the learned Advocate Miss Karishma S. Sarin appointed to represent 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 Bench.

[iii] The Application stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde