



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

**923 CRIMINAL APPLICATION NO. 1699 OF 2025
IN APEAL/349/2025**

Ajay Maruti Choure

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Gore Ravindra Vitthal

APP for Respondents-State: Mr. D. J. Patil

Advocate for Respondent No.2 : Mr. Jain Jitendra S. (Appointed)

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 13, 2025.

PER COURT :-

1. Heard both sides.
2. The present application has been filed by the original accused seeking suspension of the substantive sentence imposed on him in Special Case (POCSO) No. 04/2019, by judgment and order dated 05/05/2025 passed by the learned Special Judge (POCSO) and Additional Sessions Judge, Basmathnagar, District Hingoli. The applicant has been convicted as follows:

"1) Accused Ajay Maroti Choure is convicted under Section 235(2) of the Code of Criminal Procedure for offences punishable under section 4 of the Protection of Children from Sexual Offences Act, 363, 366A, 376(1) of the Indian Penal Code and sentenced to suffer as under:

(1) For the offence punishable under section 4 of the Protection of Children from Sexual Offences Act, he is sentenced to suffer R.I. for 10 years, with fine of Rs.100/-, in default of payment of fine S.I. for 10 days.

(2) For the offence punishable under section 366A of the Indian Penal Code he is sentenced to suffer S.I. for 5 years and fine of Rs.100/-, in default of payment of fine S.I. for 10 days.

(3) No separate sentence is passed for offence punishable under section 363 of the Indian Penal Code as sentence is

passed for it's aggravated form i.e. section 366A I.P.C.

(4) No separate sentence is passed for offence punishable under section 376(1) I.P.C. in view of section 42 of the P.O.C.S.O. Act."

3. The learned Counsel for the applicant submits that although the applicant has been sentenced under various provisions, the maximum substantive sentence awarded is 10 years. He submits that the applicant has been in custody for the last eight months. He has drawn attention to paragraphs 35 to 40 of the judgment of the Trial Court, pointing out that in her statement recorded under Section 164 of the Cr.P.C. before the Magistrate, the victim has categorically denied sexual intercourse.

4. It is further submitted that different dates of sexual intercourse were stated before the doctor and the police, indicating inconsistencies. The learned Counsel argues that such contradictions render the testimony of the prosecutrix unreliable, especially since she has completely denied sexual intercourse before the Magistrate. Therefore, according to him, the offence of sexual intercourse is not made out.

5. The learned APP strongly opposed the prayer for suspension of sentence.

6. In view of the above, considering the inconsistencies in the statement of the prosecutrix, more particularly that in her statement under

Section 164 Cr.P.C. she denied any sexual activity with the applicant, it appears that the applicant has a good case on merits to argue in appeal. Therefore, the substantive sentence imposed on the applicant deserves to be suspended till the final hearing and disposal of the appeal, subject to the condition that the fine amount is deposited before the Trial Court, if not already deposited, and on the following terms:

ORDER

- 1) The application is allowed, subject to the condition that the applicant shall deposit the fine amount before the Trial Court, if not already deposited.
- 2) The sentence imposed on the applicant/appellant in Special Case (POCSO) No. 04/2019 is hereby suspended till the final hearing and disposal of Criminal Appeal No. 349/2025.
- 3) The applicant/appellant shall be released on P.R. bond of Rs.30,000/- (Rupees Thirty Thousand only), with two sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.
- 4) The applicant/appellant shall not commit any criminal activity during the pendency of the appeal.
- 5) Bail before the Trial Court.

7. Fees of the appointed advocate shall be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per rules.

(ARUN R. PEDNEKER, J.)

vj gawade/-.