



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPLICATION NO. 1896 OF 2025
IN APEAL/395/2025

PURSHOTTAM ALIAS AMOL GAJANAN WANARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Kedar Balbhim R.
APP for Respondent/State: Mr. S. K. Shirse
Advocate for Respondent No.2 :
Mrs. Smita Chole (Kendre) (*Appointed*)

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WITH
CRIMINAL APPEAL NO. 395 OF 2025

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CORAM : ARUN R. PEDNEKER, J.
DATE : 16.07.2025

P.C. :

- 1] Heard.
- 2] Criminal Appeal No.395 of 2025 is **admitted**.
- 3] The present application has been filed by the applicant for suspension of substantive sentence imposed on him in Special Case (Child Prot.) No.27/2017, dated 07.01.2025, by learned Additional Sessions Judge, Bhusawal. The applicant has been convicted thus:

"1. Accused Purshottam alias Amol Gajanan Vanare is convicted vide Section 235(2) of the Code of Criminal Procedure, for the offences punishable under Sections 376(1), 354, 451 and 323 of the Indian Penal Code

and, for the offence punishable under Section 4 of the Protection of Children from sexual Offences Act, 2012.

(i) Accused is hereby sentenced to suffer seven years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default of payment of fine amount, he shall suffer rigorous imprisonment for two months, for the offence punishable under Section 4 of the POCSO Act.

(ii) Accused is hereby sentenced to suffer one year rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees one thousand Only) and in default of payment of fine amount, he shall suffer rigorous imprisonment for one month, for the offence punishable under Section 354 of the IPC.

(iii) Accused is hereby sentenced to suffer six months rigorous imprisonment and to pay fine of Rs.500/- (Rupees five hundred only) and in default of payment of fine amount, he shall suffer rigorous imprisonment for fifteen days, for the offence punishable under Section 451 of the IPC.

(iv) Accused is hereby sentenced to suffer six months rigorous imprisonment and to pay a fine of Rs.500 (Rupees five hundred only) and in default of payment of fine amount, he shall suffer rigorous imprisonment for fifteen days, for the offence punishable under Section 323 of the IPC.

(v) All the aforesaid punishment shall run concurrently.”

4] The maximum sentence imposed is of 7 years. All sentences to run concurrently. The learned counsel for the applicant submits that the Judgment is not sustainable on account of the fact that there is prior enmity between the parties and this is a case of implication. He points out the

evidence of the victim, more particularly, the cross-examination, wherein he points out that there was fight between the applicant and the uncle of the victim and that the applicant at the relevant time was outside the house and not in the house.

He submits that the victim was examined within 10 hours of the incident and that the medical evidence has not supported the case of the applicant.

That, the evidence was also stated to have been destroyed because within 10 hours the clothes were changed, undergarments were changed at the time of examination. He points out that there is no injury on any part of the body, there is no external injury anywhere on the body. The CA Report is also received, which is negating the case of the prosecution. There is no DNA or pubic hair of the applicant found on the victim. The medical opinion is that there is no use of force and final opinion was reserved till FSL report. The FSL reports are also negative. As such, he submits that although the victim had stated that she was forcefully sexually assaulted, the medical evidence does not corroborate the evidence of the victim. He also submits that considering the rivalry between the parties and that the fight is between the applicant and the uncle, who is the witness, this would be a case of implication and, thus, sentence imposed be suspended.

5] Per contra, the learned APP, so also, the learned

counsel for respondent no.2 submits that the trial court has particularly observed that although the FSL reports are negating the statement of the victim and that on the basis of the statement of the victim that the applicant can be convicted. The uncle of the victim PW-1 is the eye witness. He had seen the applicant on the body of the prosecutrix. Considering the same, he submits that the application for suspension of sentence may be rejected.

6] Having Considered the submissions and, more particularly, deposition of the victim that the assault had been forceful and no injuries were noticed on the victim. There had been fight between the uncle of the victim and the applicant at the relevant date, as such, possibility of implication cannot be ruled out. The applicant would have arguable case on merits. The sentence can thus be suspended.

7] 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 (Child Prot.) No.27/2017, dated 07.01.2025, by learned Additional Sessions Judge,

Bhusawal, 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.

v] Mrs. Smita Chole (Kendre), learned counsel appointed to represent the 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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