



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1002 CRIMINAL APPLICATION NO. 2010 OF 2025
IN
APPEAL/187/2025

SWAPNIL @ RAJU BHAGWAN TAKAT
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Salunke Sudarshan J
APP for Respondent/State: Mr. N. B. Patil
Advocate for Respondent No.2 :
Mr. Ingole Dhanraj S. (*Appointed*)

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 02.07.2025

P.C. :

1] Heard.

2] The present application has been filed by the applicant for suspension of substantive sentence imposed on him in Special Case (POCSO) No.74/2023, dated 06.02.2025, by learned Additional Sessions Judge, Parbhani. The applicant has been convicted thus:

"1. Accused Swapnil @ Raju Bhagwan Takat is hereby convicted of the offence under Section 376(1), 376AB of the Indian Penal Code and under Section 4, 8 of the Protection of Children From Sexual Offences Act, 2012 vide Section 258(2) of the Bhatiya Nagrik Suraksha Sanhita, 2023.

2. Accused Swapnil @ Raju Bhagwan Takat is sentenced to suffer rigorous imprisonment of ten (10) years and fine of Rs.2000/- (Rs. Two Thousand), in

default, to suffer rigorous imprisonment of one (1) month as per Section 376(1) of Indian Penal Code.

3. Accused Swapnil @ Raju Bhagwan Takat is sentenced to suffer rigorous imprisonment of twenty (20) years and fine of Rs.3000/- (Rs. Three Thousand), in default, to suffer rigorous imprisonment of one (1) month as per Section 376AB of Indian Penal Code.

4. Accused Swapnil @ Raju Bhagwan Takat is sentenced to suffer rigorous imprisonment of twenty (20) years and fine of Rs.3000/- (Rs. Three Thousand), in default, to suffer rigorous imprisonment of one (1) month, as per Section 4 of the Protection of Children From Sexual Offences Act, 2012.

5. Accused Swapnil @ Raju Bhagwan Takat is sentenced to suffer rigorous imprisonment of three (3) years and fine of Rs.1000/- (Rs. One Thousand), in default, to suffer rigorous imprisonment of fifteen (15) days, as per Section 8 of the Protection of Children From Sexual Offences Act, 2012.”

3] The learned counsel for the applicant submits that the applicant is convicted for the offences under aforereferred sections, primarily, for the reason that the applicant has inserted finger in the private part of the victim girl aged about 3 years 11 months and sentenced him to maximum punishment of 20 years imprisonment.

4] The learned counsel for the applicant submits that the evidence on record cannot calls for conviction absolutely. He submits that it is a case where the complainant misused the provisions of the POCSO Act. He

has primarily take me through the evidence of the informant and the cross-examination, more particularly, at paragraphs no.16 and 17, which reads as under:-

“16] Accused and his father does business of installation of tent in marriage ceremonies. On day of 4th S. R. and U. while coming by bullock cart tent installed in the village get torn, I do not know about it. It is true that on that day on this reason there was dispute in between accused and my husband, children. It is true that S., R. have beaten accused by stick, mother of the accused intervened, her bangles are broken. It is true that accused, his mother will give report against my husband and children, therefore, I along with son have gone to the Police Station and give report against the accused.

17] Gangadhar Munjaji Kadam is son of sister. Gangadhar is nephew of Chairman of Singnapur. He has field at Parbhani to Gangakhed road. Gangadhar has Dhaba on the road. Said Dhaba is in Singnapur Shivar. Said Dhaba is having Non-veg food therefore, police personnel visit to said Dhaba. Due to it Gangadhar, Ravsaheb have cordial relations with police personnel. My son S. informed about the beating to accused to Gangadhar on phone. It is true that due to it I, S., Gangadhar decide to lodge report initially before accused did report. Gangadhar stated about the incident to S. S. gave report and thereafter, my thumb impression on it. All have decided and thereafter, Gangadhar, S. gave report. It is true that police told that if we give report like this against accused then they would catch accused at the earliest, before accused give report.”

5] The learned counsel for the applicant has also taken me through the cross-examination of the Investigating Officer, more particularly, at paragraphs no.29 and 30, which reads as under:-

“29] I did not take entry in station diary relating to taking accused in custody. I did not mention date and time of taking accused in custody in Exh.61. I gave name of the victim girl and entire history in letter Exh.61. Pre-arrest medical examination report of accused is not attached along with charge-sheet. I did not beat accused before taking him in custody or prior to his medical examination by medical officer on the date of 5th day. I arrested accused on 04/05/2023 at about 9:48 hours as per arrest panchanama. After arrest of accused before he is produced in court medical examination of the accused in get them by me. As per Exh.64 it is mentioned in it that accused had blunt trauma to left shoulder and swelling over right fronto temporal region. I did enquiry relating to as to who has beaten to accused. Its documents are not attached along with charge-sheet. After going in village I made inquiry as to who has beaten to accused. Relating to it statement of people are not recorded.

30] Accused and his father has tent business, I know about it. While son of informant was taking bullock cart tent of the accused is torn, therefore, accused and his father made complaint of it to the complainant, on this count there was quarrel in between them on the date of 4th day and complainant's family member has beaten accused, I do not know about it.”

6] The learned counsel for the applicant has also taken me through evidence i.e. the Medical Certificate of the applicant, which shows that the applicant was injured on the relevant date, however, his complaint was not taken.

7] The learned counsel from the cross-examination of the informant has submitted that on the relevant date the applicant was assaulted by her husband and his 2 sons and that the applicant had gone to the police station to register

the complaint. However, so as to avoid the complaint at the instance of the applicant the informant's family have registered the present case against the applicant and the applicant was taken in custody and that although the applicant was assaulted by the informants family members, the case of the applicant was not registered. The learned counsel for the applicant submits that from the cross-examination, as noted above, it is a bogus and fabricated case.

8] Per contra, learned counsel for the informant points out the medical examination, more particularly, clause j(b)(i) and submits that there is an admission made by the applicant about the incident, although, some kind of explanation is given that it is an accidental case that accidentally the nail of the finger has scratched on perineal region of victim.

9] Per contra, learned counsel for the applicant has pointed out the Judgment of this court in the case of Amol s/o Madan Kaste Vs. The State of Maharashtra and another, passed in Criminal Appeal No.605 of 2020 along with connected matters, dated 21.02.2025, more particularly, paragraph no.21. It is submitted that the applicant was in custody at the relevant time and admission given in view of Section 26 of the Indian Evidence Act, 1872 is inadmissible.

10] The learned APP has opposed for grant of any relief to the applicant, considering the gravity of the offence.

11] Considering the above submissions, case can be seen from the cross examination of the informant, primarily, that she has admitted that the accused was beaten by sons of the informant by stick and mother of the accused has intervened and her bangles were broken and there was apprehension that the report would be registered in the police station by the applicant / accused for the same. Thereafter with the help and advise of one of the family members that they had decided to lodge the report against the applicant / accused. It is in the cross-examination she has also stated that thereafter the report is lodged and she had only put her thumb impression on the report prepared by her sons. Her 164 statement was also recorded on advise of the police.

12] Prima facie, considering this evidence of the informant and also of the victim, wherein in the cross-examination she has stated that her grandmother and father told her *“...My father, elder mother told me therefore, I stated that Raju Mama did so with me.”*.

13] Considering these aspects and also that the statement made by the accused to the Doctor, while in

police custody being not admissible under the Indian Evidence Act, the conviction of the applicant is prima-facie not sustainable. The applicant has the case on merits.

14] Considering the submissions of the applicant, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentenced imposed on the applicant in Special Case (POCSO) No.74/2023, dated 06.02.2025, by learned Additional Sessions Judge, Parbhani, 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.

iv] Bail before the trial Court.

15] Mr. Dhanraj Ingole, learned counsel appointed to represent the cause of the victim / respondent no.2 has ably assisted the court and shall be paid fees of Rs.10,000/- by the High Court Legal Services Sub-committee, Aurangabad.

[ARUN R. PEDNEKER]
JUDGE