



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

907 CRIMINAL APPLICATION NO. 2127 OF 2025
IN
CRIMINAL APPEAL NO.697 OF 2024

Datta Vishnu Gongane

....Applicant

Versus

The State of Maharashtra

.....Respondent

.....

Shri. D. S. Ingole h/f. Shri. Nilesh S. Ghanekar, Advocate for the
Applicant

Ms. A. S. Deshmukh, APP for the State.

Shri. Swapnil Mule, Advocate for the Victim (appointed through legal
aid)

.....

CORAM : NEERAJ P. DHOTE, J.

Dated : DECEMBER 02, 2025

PER COURT :-

. This is the Application for Suspension of Sentence awarded by the
learned Additional Sessions Judge, Parbhani in Special Case No.94/2022
convicting the Applicant / Appellant for the offence punishable under
Section 4 of the Protection of Children from Sexual Offences Act, 2012
(for short, 'POCSO') and sentencing to suffer Rigorous Imprisonment for
20 years and fine of Rs.25,000/- (Rs. Twenty Five Thousands only), in
default to pay fine to suffer Rigorous Imprisonment for six (06) months.

2. The Prosecution's case is reproduced from the impugned
Judgment as follows :

*"i] Victim-girl resides along with her parents, brother and
his wife at Itali, Tq.Manwat. She is studying in 11th standard.
Accused has house in the same vicinity where victim-girl
resides. Their house is situated after 7-8 house of the victim-
girl. Agricultural field of victim-girl and accused is adjacent to*

each other, therefore, accused are known to victim-girl. Accused used to call victim-girl as a 'sister'. Accused did not have sister therefore, they were calling victim-girl as sister. By this relation victim-girl used to go to the house of the accused.

ii] Accused No.1 is married. His wife Sonali used to reside in the house alone after both accused and their parents go to field. Therefore, family members of the house of accused asked victim-girl to stay in their house along with Sonali-wife of accused No.1.

iii] On 12/08/2021 prior to Nagpanchami festival victim-girl has gone to the house of accused to watch T.V. At that time Sonali- wife of the accused No.1 has gone out of the house to take water. At that time accused No.1 with bad intention moved hand over the person and breast of the person of victim-girl and he was behaving indecently. Victim-girl asked him not to do it. But, he did not listen the victim-girl and against her will established sexual relations with victim-girl. While committing rape on the victim-girl he put his hand on the mouth of the victim-girl.

iv] Another incident of sexual assault happened after Nagpanchami festival. At that time wife of accused No.1 has gone to her maternal house. Accused No.1 went to the house of victim-girl and he called victim-girl. He threatened victim-girl if she will not accompany him then, he will defame her in village. Therefore, victim-girl accompanied him. At that time also he committed rape on the victim-girl. Thereafter, he threatened victim not to state about it. Victim-girl told him that she will tell about it to her mother on that he tender apology to victim-girl.

v] Victim-girl has gone to the field along with her parents. At that time accused No.1 also gone to his field along with her mother. There accused No.1 called victim- girl and committed rape on her in the tin-shed erected on his field. After this incident for 3-4 times accused No.1 committed rape on victim-girl.

vi] After 4-5 months from the incident of rape by accused No.1, accused No.2 who is younger brother of accused No.1 went to the home of the victim-girl in afternoon time and called victim-girl by saying that his mother has called her. Victim-girl has gone to his house. At that time accused No.2 told her that he came to know about relation of victim-girl and his elder brother. He asked her to have sexual relationship with him, otherwise he will defame her in the village. By saying so, he also committed rape on victim-girl.

vii] On 01/04/2022 father of the victim-girl has gone to Manwat. At 11.00 a.m. victim-girl made phone call to her father and told him that she is suffering from stomach pain. Therefore, her father returned home from Manwat. Thereafter, he called his wife from the field and they both

have taken victim-girl to Dr.Sapate madam at Manwat. Dr.Sapate Madam examined victim-girl and told that she is pregnant. After that parents of the victim-girl inquired with victim-girl. On that victim-girl stated name of accused No.1. Thereafter, victim-girl was taken to Civil Hospital, Manwat where she delivered male child on 01/04/2022.

viii] On the same day father of the victim-girl gave report in Manwat Police Station. On his report offence vide C.R. No.91/2022 is registered against accused No.1 U/Sec.376(2) (n) of the IPC and Section 4, 8 and 12 of the POCSO Act. Father of the victim-girl gave report that victim-girl is 16 years of age. Her date of birth is 27/01/2006. Accused No.1 has ravished her. After giving report, father of the victim-girl learnt from victim-girl that accused No.2 has also committed rape on victim-girl. Therefore, he gave supplementary statement. Wherein he also states that he mentioned date of birth of victim-girl as 27/01/2006 inadvertently from the Aadhar Card of the victim-girl. But, her real date of birth as per school record is 27/02/2005.”

2.1. After full-fledged Trial, the learned Trial Court convicted the Applicant – Appellant as above.

3. Heard the learned Advocate for the Applicant and the learned APP for the State and with their assistance gone through the relevant evidence on record.

4. As regards the date of birth and the age of Victim is concerned, the Prosecution examined the Headmaster of the School as PW5, where the Victim was admitted in the first standard. His evidence show that, the date of birth of the Victim recorded in the school record is 27.02.2005. Further, Anganwadi Sevika from the village of Victim is examined as PW6, whose evidence show that, her work includes entry of death and birth in the record. Her evidence show that, the Victim's date of birth was recorded as 27.02.2005 in the birth and death register. The

Victim's biological Father is examined as PW1. He deposed the date of birth of the Victim as 27.02.2005 which is consistent with the date of birth of the Victim recorded in the primary school and with the record maintained by the Anganwadi Sevika.

5. The Victim is examined as PW2. It is the contention of the learned Advocate for the Applicant that, there were consensual relations between the Victim and the Applicant. The relevant paragraph nos.1 and 2 from the testimony of the Victim is reproduced below :

"1. I reside along with my father, mother, brother and sister-in-law. Witness stated name of village but in order to keep it confidential same is not mentioned, I was taking education in 11th standard in college. Witness stated name and place of college but in order to keep it confidential same is not mentioned. At that time I was going to college regularly. Due to summer vacation i was residing at home. I know accused in this matter because they reside after 7-8 house of our house. Accused have no sister therefore they consider me as sister They were calling me as DIDI. As they were my brother I used to commute to their house. Sonali wife of Datta resides alone at home therefore they asked her to stay with her at home.

2. Prior to Nagpanchmi on 12.08.2021 I had been to their house to watch television. Wife of Datta had gone to outside Wada to fetch water, Datta was at home. At that time Datta moved his hand over my body and breast and behaved in obscene manner indecently. I asked him not to do such thing with me. He did not listen to me. He did sexual intercourse with me against my will. While doing so seeing that nobody is present in house he pressed my mouth. He removed my clothes, fall on my person in supine and did not allow me to do movement."

6. On going through the testimony of the Victim, I see no merit in the submission made by the learned Advocate for the

Applicant that the relations between the Applicant / Appellant and the Victim were consensual. The evidence of the Victim clearly indicate that, acts done by the Applicant – Appellant were against her wish. *Prima facie*, the Applicant – Appellant had taken disadvantage of the situation. The testimony of the Victim show the date of incidence as 12.08.2021 and other incidents of sexual intercourse thereafter. From the date of the incident, and birth date of the Victim as proved by the Prosecution, it becomes clear that, at the relevant time the Victim was the Child as defined under Section 2 (d) of the POCSO. The DNA Report below Exh.64 records the opinion that, the Victim and the Applicant – Appellant were concluded to be biological parents of the baby. The learned Trial Court has convicted and sentenced the Applicant – Appellant after considering the evidence on record. In my considered view, this is not the fit case for Suspension of Sentence and hence, the following order is passed.

ORDER

- (i) The Application is rejected.
- (ii) The fees of the learned Advocate appointed through legal aid to represent the Victim is quantified at Rs.5,000/- (Rs. Five Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(NEERAJ P. DHOTE, J.)

GGP