



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

**923 CRIMINAL APPLICATION NO. 2206 OF 2025
IN CRIMINAL APPEAL/115/2025**

**HULAJI BHIMRAO KHANDAJE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr.N.S.Ghanekar
APP for Respondent-State : Mrs.V.N.Patil-Jadhav
Advocate for Respondent no.2 : Ms.Sayali Tekale

...

WITH
CRIMINAL APPEAL NO. 115 OF 2025

...

CORAM : ARUN R. PEDNEKER, J.
DATE : 30.07.2025

P.C. :

1] The present application is filed by the applicant for suspension of substantive sentence imposed on the applicant in Special Case No.97/2021, by order dated 15.10.2024, by learned Extra District Judge-1 and Additional Sessions Judge, Nanded. The applicant has been convicted thus:

The applicant is convicted for the offence punishable under Section 3 punishable with Section 4 of

POCSO Act and sentenced to suffer R.I. for 10 years and to pay fine of Rs.3,000/-, IDSI for fifteen days.

2] The learned counsel for the applicant submits that the applicant is accused no.2 and the maximum sentence awarded to the applicant is of 10 years and the applicant has undergone 4 years and 1 months sentence. He further submits that the victim in her deposition at para nos. 6 and 8 stated that the accused no.1 committed sexual intercourse with her on various occasions. The learned counsel for the applicant submits that the role of the applicant was only to help accused no.1. In the cross-examination the victim has admitted that the accused no.1 had not committed sexual intercourse with him. As such, accused no.1 is acquitted. He further submits that the victim, in her cross examination, stated that the victim did not want to file complaint against the accused persons, but, at the instance of her parents, the complaint is filed. He further submits that the trial Court convicted the applicant on the basis of the deposition of victim that the applicant had sexual intercourse with her while accused nos. 1 and 3 were out of house. The evidence of the prosecution is not of sterling quality. He further submits that the applicant has arguable case.

3] Per contra, the learned APP, so also, the learned counsel for the respondent no.2 submit that the victim is

consistent with her statement as regards the applicant / accused no.2 and medical evidence indicates that sexual intercourse committed on the victim.

4] Considered the rival submissions. Considering that the applicant is in jail from 4 years and 1 month, so also, the prosecutrix in her deposition in chief has stated of penetrative sexual assault by accused no.1 but resiled in cross examination. Thus, the statement of the victim is not on sterling quality and that she had filed the complaint at the instance of her parents. Considering this aspect of the matter, the applicant has good case on merits and the appeal would take substantial time to hear. Considering the same, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentence imposed on the applicant in Special Case No.97/2021, by order dated 15.10.2024, by learned Extra District Judge-1 and Additional Sessions Judge, Nanded, 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 two sureties in the like amount. Bail before the trial Court.

iv] Criminal Application is disposed of accordingly.

v] It is also clarified that the observations made in this order are limited only for the purpose of deciding the present Application.

vi] Ms.Sayali Tekale, learned counsel appointed by this Court to represent the cause of respondent no.2, shall be paid fees of Rs.10,000/- by the High Court Legal Aid Services Sub-Committee, Aurangabad.

[ARUN R. PEDNEKER]
JUDGE

DDC