



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL APPLICATION NO. 2246 OF 2025
IN APEAL/455/2025

KRUSHNA ALIAS GUDDYA MAKACHITTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Anuj Ajay Fulfagar, Advocate for Applicant/Appellant;
Mr. B. A. Shinde, APP for Respondent No.1-State.
Mrs. Pratibha Suryawanshi, Advocate for Respondent No.2.

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CORAM : NEERAJ P DHOTE, J.

DATE : 20th NOVEMBER, 2025

PC:-

1. Heard Mr. Anuj Fulfagar, learned Advocate for the Applicant/Appellant, Mr. B. A. Shinde, learned APP for Respondent No.1-State. Mrs. Pratibha Suryawanshi, learned Advocate for Respondent No.2.
2. They took me through the evidence on record and impugned judgment.
3. This is an application for suspension of sentence imposed by the learned Sessions Judge in Special Case No.10 of 2023 by judgment and order dated 20.05.2025, convicting the Applicant/Appellant for the offence punishable under Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 (POCSO Act) and sentencing him

to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for 3 months. The Applicant/Appellant is further convicted for the offence punishable under Section 506(ii) of IPC and sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for 3 months. No separate sentence is awarded for the offence punishable under Section 376(2) (n) of IPC.

4. The prosecution's case in brief as recorded in the impugned judgment is that, the Victim was studying in 9th Standard. She was residing with her parents, grand-mother and siblings. The Applicant/Appellant was also the resident of the same village. They both were acquainted to each other. On 17.12.2022, the Victim's parents had gone to the State of Gujarat for work. On that date, in the morning at around 10:00 a.m., Victim went to collect the grass for goats. The Applicant/Appellant came in the auto-rickshaw and asked her to accompany him. Though, the Victim opposed, the Applicant/Appellant made her to sit in the auto-rickshaw forcibly and took her to various places. The Applicant/Appellant kept the Victim with him for 4 days, during which period he established forceful sexual relations with the Victim. After 4 days, the Applicant/Appellant dropped the Victim near the Civil Hospital at Nandurbar. The Victim

then contacted her father using a mobile phone of unknown person, after which she was taken home. The matter was thereafter reported to the police, resulting in registration of Crime No.465 of 2022 at Taluka Police Station, Nandurbar, for offences punishable under the IPC and the POCSO Act.

5. The learned Trial Court, in paragraph No.26 of the impugned judgment, recorded a finding that at the time of the incident, the Victim was 15 years and 2 months old. Though the Victim has deposed her date of birth, the evidence of the Victim with regard to her own date of birth would be hearsay in nature. The father of the Victim, examined as PW-2, deposed that he could not state the exact date and month of Victim's birth, though he stated that she was born in the year 2007. No evidence in respect of primary school record of the Victim has in lead. Only the school record of the second school attended by the Victim has been brought on record. However, there is no evidence to show on what basis the date of birth was recorded in the first school attended by the Victim. This *prima-facie* indicates that there is no concrete and reliable evidence regarding the exact date of birth and age of the Victim.

6. The evidence of the Victim, as well as the medical history recorded by the Medical Officer, indicates that the Victim and the

Applicant/Appellant were acquainted with each other. The testimony of the Victim does not show that she raised any alarm when the Applicant/Appellant allegedly forced her to sit in the auto-rickshaw and took her to various places from around 10:00 a.m. to 6:00 p.m. The evidence further reflects that the Victim and the Applicant/Appellant remained together for approximately four days. The Medical Officer, examined as PW-6, deposed that no external injuries were noticed on the Victim and opined that the possibility of forcible sexual intercourse could not be ruled out. However, the testimony of the Victim, coupled with that of the Medical Officer, do not rule out the possibility of consensual relations between the Victim and the Applicant/ Appellant.

7. The Applicant/Appellant was aged about 20 years at the time of the alleged incident. The Appeal against conviction has been admitted today, and there is no likelihood of its coming for early hearing in the near future. The Applicant/Appellant was on bail throughout the trial. The Applicant/Appellant has a good case on merits. In this view of the matter, I proceed to pass the following order:-

ORDER

- (i) The Application is allowed.

- (ii) The sentence imposed by the learned Special Judge, Nandurbar in Special Case No.10 of 2023 vide the Judgment and order dated 20.05.2025 on the Applicant/Appellant, by name, Krushna Alias Guddya Maka Chitte, for the offence punishable under Section 376(2)(n) and 506(ii) of the IPC and under Section 6 of POCSO Act vide Section 235(2) of Cr.P.C., is suspended during pendency of the Appeal.
- (iii) Applicant - Krushna Alias Guddya Maka Chitte be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- (iv) The Applicant – Appellant shall co-operate in early hearing of the Appeal.
- (v) Bail before the Trial Court.
- (vi) Fees of the learned Advocate Mrs. Pratibha Suryawanshi appointed through legal aid to represent Respondent No.2 is quantified at Rs.7,500/- (Rupees Seven Thousand and Five Hundred) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(vii) Application stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)

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