



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

**925 CRIMINAL APPLICATION NO. 2264 OF 2025
IN APEAL/461/2025**

Yuvraj Vishnu Kargude

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. M. P. Kale h/f Mr. Solanke Sharad S.

APP for Respondents-State: Ms. P. V. Diggikar

Advocate for Respondent No.2 : Mr. Chate Amol Vyankati

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 06, 2025.

PER COURT :-

1. Heard both sides.
2. Present application has been filed by original accused for suspension of substantive sentence imposed on him in Special Case (Child Protection) No.13 of 2021, dated 20/06/2025, by learned Special Judge, (Under POCSO Act), Beed, District Beed. The applicant has been convicted thus ;

" 1] Accused Yuvraj Vishnu Kargude is convicted for the offence under section 5 (I) punishable under section 6 of the Protection of Children From Sexual Offences Act, 2012 as per section 235(2) of the Code of Criminal Procedure.

2] Accused is sentenced to suffer rigorous imprisonment for 20 years and ordered to pay fine amount of Rs.10,000/- (Rs. Ten Thousand only), in default of payment of fine to suffer rigorous imprisonment for 1 (One) year...."

3. The learned Counsel for the applicant submits that in her deposition, the victim stated that her age in the year 2019 was 19 years. He further submits that the alleged incidents of sexual assault occurred on 28/08/2020 and subsequently on 22/09/2020. However, the Trial Court has held that the victim was 17 years and 11 months old at the time of the offence.

4. It is submitted that there exists *prima facie* doubt regarding the age of the victim being below 18 years. The learned Counsel argues that, apart from the age factor, the relationship between the applicant and the victim appears to have been consensual in nature. According to the applicant, there were two instances of consensual sexual relations between him and the victim, arising out of a love affair and a promise of marriage. It is further submitted that the FIR was lodged only after the applicant stopped responding to the victim's phone calls.

5. The learned Counsel contends that, given the doubt regarding the victim's age, offences under the POCSO Act are not made out, and due to the consensual nature of the relationship, the applicant has a good case on merits as regards the IPC offence of rape, and therefore, the substantive sentence deserves to be suspended.

6. *Per contra*, the learned APP submits that in her deposition, the victim has clearly stated that the sexual act was forceful and without her consent. This version is also supported by the medical evidence. The learned APP submits that while the victim may have been in a relationship with the applicant for about a year, at the time of the offence, she was aged 17 years and 11 months, and the consent of a minor is immaterial. On this basis, it is urged that the application for suspension of sentence may be rejected.

7. The learned Counsel appearing for respondent No.2 submits that he has no objection to the grant of bail.

8. Having considered the submissions and the material on record, this Court is of the opinion that there is *prima facie* some doubt regarding the age of the victim at the time of the offence. In her deposition, the victim stated that she was 19 years old at the time of the incident. Although the secondary school certificate was produced during trial, primary documentary evidence such as birth certificate or admission register was not produced before the Trial Court to conclusively prove the age.

9. Further, considering the nature of the relationship between the applicant and the victim, there is *prima facie* doubt whether the physical relationship was entirely without consent. While this is a matter for final adjudication at the time of appeal hearing, these circumstances are sufficient for the purpose of considering suspension of sentence.

10. In light of the above, the substantive sentence imposed on the applicant deserves to be suspended till the final hearing and disposal of the appeal, subject to the condition that he shall deposit the fine amount before the Trial Court, if the same has not already been deposited, and on the following terms :-

ORDER

- 1) The application stands allowed, subject to the condition that the applicant shall deposit the fine amount before the Trial Court, if the same has not already been deposited.
- 2) The sentence imposed on the applicant / appellant in Special Case (Child Protection) No.13/2021 is hereby suspended till the final hearing and disposal of Criminal Appeal No.461/2025.
- 3) The applicant/ appellant be released on P.R. of Rs.30,000/- (in words rupees thirty thousand only) with two sureties of Rs.15,000/- each (in words rupees fifteen thousand only).
- 4) Applicant/ appellant shall not commit any criminal activity.
- 5) Bail before Trial Court.

(ARUN R. PEDNEKER, J.)

vj gawade/-.