

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

5 CRIMINAL APPLICATION NO.2494 OF 2025
IN
CRIMINAL APPEAL NO.236 OF 2025

Vitthal Balasaheb Khairnar

.Applicant

VERSUS

The State of Maharashtra and Another

..Respondents

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Shri. Nilesh S. Ghanekar, Advocate for the Applicant

Shri. N. D. Batule, APP for Respondent No.1 - State.

Ms. Akshara S. Madake, Advocate for the Respondent No.2 (appointed)

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CORAM : NEERAJ P. DHOTE, J.

Dated : OCTOBER 13, 2025

PER COURT :-

. This is the Application for Suspension of substantive Sentence imposed by the learned Additional Sessions Judge, Vijapur, Dist. Aurangabad, in Special Case (Child Prot.) No.13/2017 by the Judgment and Order dated 24.09.2024 convicting the Applicant – Appellant for the offence punishable Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, ‘POCSO Act’) and sentencing him to suffer Rigorous Imprisonment for 10 (Ten) years and fine of Rs.3000/- (Rupees Three Thousand only), in default to suffer Rigorous Imprisonment for 01 (One) year, and also convicted for the offence punishable under Section 376(1) of the Indian Penal Code (for short, ‘I.P.C.’), however, no separate sentence is passed in view of Section 42 of the POCSO Act.

2. The case of the Prosecution, in brief, is that, the Applicant raped

the Victim who was below 18 (Eighteen) years. The forceful sexual act was committed by the Applicant on the Victim at different places. The Applicant and the Victim, since untraceable, the Maternal Uncle of the Victim lodged the missing Report. During search, the Victim was found with the Applicant and was brought to the Police Station, the Crime was registered, the investigation was done and the Applicant was Charge-sheeted. After the Trial, the Applicant – Appellant came to be convicted, as above.

3. Heard the learned Advocate for the Applicant, the learned APP for the State and the learned Advocate for the Respondent No.2. Perused the papers on record.

4. From the evidence on record, at the relevant point of time, the Victim was 17 (Seventeen) years, 2 (Two) months and 8 (Eight) days old. The Applicant was 22 (Twenty two) years old at the relevant time. The testimony of the Victim indicate that, she and the Applicant – Appellant were known to each other and the intimacy developed between them. Both were working at one place. There are some omissions as seen from the testimony of Victim. The testimony of the Medical Officer shows that, the hymen of the Victim was torn and the Victim gave the history of love affair between her and the Applicant. The evidence on record *prima facie* indicates that, the Victim eloped with the Applicant – Appellant. The Applicant was on bail during the

Trial. Sentence awarded to the Applicant is a term sentence. He has suffered little over 1 (One) year imprisonment. The Appeal is not likely to be heard finally in the near future and hence, I pass the following order.

ORDER

- (i) The Application is allowed.
- (ii) The substantive Sentence imposed by the learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad, in Special Case (Child Prot.) No.13/2017 *vide* the Judgment and Order dated 24.09.2024 on the Applicant, by name, Vitthal Balasaheb Khairnar for the offence punishable under Section 376 (1) of the I.P.C. and Section 4 of the POCSO Act, is suspended during pendency of the Appeal.
- (iii) Applicant - Vitthal Balasaheb Khairnar 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 shall co-operate in early disposal of the Appeal.
- (v) Bail before the Trial Court.
- (vi) Fees of the learned Advocate Ms. Akshara S. Madake appointed to represent the Respondent No.2 – Victim is quantified at Rs.10,000/- (Rs. Ten Thousand), which shall be paid by the High Court Legal Services Sub-committee, Aurangbad Bench.
- (vii) Application stands disposed off.

(NEERAJ P. DHOTE, J.)

GGP