



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL APPLICATION NO. 2490 OF 2023
IN APEAL/771/2024
WITH
CRIMINAL APPEAL NO. 771 OF 2024

SOMNATH BHANUDAS MHASKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Gandhi Amol Subhash
APP for Respondent/State : Mr. N.B. Patil
Advocate for Respondent 2 : Mrs. Sunita G. Sonawane
...

CORAM : ARUN R. PEDNEKER, J.
Dated : August 06, 2025

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP and Mrs. Sunita G. Sonawane, learned counsel for respondent No. 2.
2. Criminal Application No. 2490/2025 is filed for suspension of substantive sentence imposed on the applicant/appellant by the learned Special Judge under POCSO Act, Ahmednagar vide judgment and order dated 21.12.2022 in Special Case No. 131/2021. The relevant portion of operative part of the order is as under :-

"ORDER

(1) Accused **Somnath Bhanudas Mhaske** is hereby **convicted** to have committed offence punishable under Section 376(f, k & n) punishable under Section 376(2) of Indian Penal Code and Section 5(1) and Section 5(j)(ii) punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2012 as per provisions of section 235(2) of Code of Criminal Procedure.

(2) As I am proceeding to sentence the accused under Section 6 of the POCSO Act 2012, no sentence is imposed upon him for offences punishable under Section 376(2) of Indian Penal Code, in view of provision of Section 42 of the

Protection of Children From Sexual Offences Act, 2012.

(3) Accused **Somnath Bhanudas Mhaske** is sentenced to suffer **Rigorous Imprisonment for Twenty (20) years** and to pay **fine of Rs.50,000/- (Rupees Fifty Thousand only)** under Section 235(2) of the Code of Criminal Procedure for the offence punishable under **Section 6** of POCSO Act. In default of payment of fine, he is further sentenced to suffer Rigorous Imprisonment for **six months**. On realization of fine amount, same be paid over to the victim girl as compensation, after the appeal period is over.

(4)"

3. The learned counsel for the applicant submits that maximum sentence of 20 years is imposed on the applicant. It is stated that fine amount is already deposited by the applicant in the trial Court. The learned counsel submits that the applicant is in jail for last four and half years and the appeal will take its own time to conclude.

4. The learned counsel submits that the judgment of the trial court suffers from basic infirmities. The case of the prosecution is based on the relations with a minor and , the trial Court was held that the victim was minor at the time of commission of the offence. Evidence as regards the age of the victim is produced in the court when the summons was issued to the doctor and the document produced by the doctor is not filed along with the chargesheet and as such, the applicant was not able to test the veracity of the document and to show the age of the victim. The learned counsel further submits that I.O. in his cross examination deposition has stated that neither victim nor her family members gave him birth certificate of the victim nor he tried to collect it. The learned counsel also submits that in the examination in chief, the I.O. has also stated that he has obtained school bonafide certificate of the victim from Changdev Vidyalaya, Narayandoh,

however, to prove the same, school teacher or staff of that school is not examined. Considering all above, the learned counsel submits that the evidence available on record against the applicant is not sufficient to hold that the victim was minor at the time of offence. The learned counsel also submits that the documents produced by the doctor are not supplied to the applicant and the applicant was not having opportunity to rebut the same. The learned counsel therefore prays to suspend the substantive sentence imposed by the trial Court.

5. The learned APP as well as the learned counsel for respondent No. 2 has strongly opposed the application filed for suspension of substantive sentence on the ground that the trial Court has rightly held that the victim was minor at the time of offence and therefore, they submit that the applicant is not entitled for any relief as prayed in the application. In this regard, the learned APP points out para No. 89 of the impugned judgment, wherein conclusion is drawn by the trial Court in respect of the age of the victim. The same is as under :-

"89) Thus, on the date of first incident 14.02.2020 she was 14 years 6 months and 5 days old, on the date of second incident 04.07.2020 she was 15 years 26 days old, when she delivered baby on 07.04.2021 she was 15 years 9 months 28 days old, i.e. child under POCSO Act. Accordingly, I record my finding to point no. 1 in the affirmative."

6. Considering the above rival submissions, it appears that the applicant is behind bars since last four and half years. It is not known when the hearing of the appeal will conclude. The applicant has arguable case on the point of age of the victim as it is the contention of the applicant that the bonafide certificate of the victim obtained from the school Changdev

Vidyalaya, Narayandoh has not been proved before the Court by examining any witness. The document produced to prove age was not filed with the chargesheet or thereafter so as to enable the applicant to meet the document. Considering the same, the applicant was prejudiced in controverting the document on the basis of which the age of the victim is established. In view of the above and long incarceration of the applicant for about four and half years, I hold that substantive sentence imposed by the trial Court can be suspended.

7. In view of the above, the application filed for suspension of substantive sentence imposed on the applicant vide above judgment and order of the trial Court is allowed and disposed of. The above substantive sentence imposed on the applicant is suspended. The applicant shall be released on bail on such terms and conditions which the trial Court may deem fit and proper.

8. The appeal is **admitted**. After admission, the learned APP waives service for respondent/State and Mrs. S.G. Sonawane, learned counsel waives service for respondent No. 2.

9. Call R. & P.

(ARUN R. PEDNEKER, J.)

ssc/