

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

902 CRIMINAL APPLICATION NO. 2491 OF 2023
IN APEAL/611/2023

Vaibhav Babarao Kadam

VERSUS

The State Of Maharashtra And Another

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Mr. Pravin N Kalani - Advocate for Applicant

Mr. Bhagwat A. Shinde - APP for State

Mr. Manish P. Tripathi - Advocate for Respondent No. 2

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CORAM : NEERAJ P. DHOTE, J.

DATED : 11TH NOVEMBER, 2025

PER COURT : -

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

2. This is an Application for suspension of the substantive sentence awarded by the Spl/Addl. Sessions Judge, Parbhani, in Special Case No. 63/2022, by Judgment and Order dated 22.06.2023, convicting the Applicant/Appellant for the offence punishable under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012, and sentencing him to undergo rigorous imprisonment for twenty (20) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand), in default, to undergo simple imprisonment for six (6) months, further convicting for the offence punishable under Section 452 of Indian Penal

Code and sentencing to suffer rigorous imprisonment for one (1) year and to pay a fine of Rs. 5,000/- (Rupees Five Thousand), in default, to undergo simple imprisonment for one (1) month, and further convicting for the offence punishable under Section 506 of the IPC and sentencing to undergo rigorous imprisonment for one (1) year.

3. The case of Prosecution, in brief, is that the Victim who was studying in 7th Std., in March-2022, was alone at home in the evening of 04.03.2022. The Applicant/Appellant, who was the delivery boy for delivering water jars, used to deliver the water jar to the grandfather of the Victim residing nearby. On the day of the incident, the Applicant/Appellant entered the house of the Victim and raped her and thereafter threatened her to kill if she disclose the incident to anybody. After fifteen (15) days, the Victim narrated the incident to her mother when her stomach was paining. The incident was reported to the Police and Crime bearing No. 117 of 2022 came to be registered with Sailu Police Station, District Parbhani for the offence punishable under Sections 452, 376(3) and 506 of the Indian Penal Code and Sections 4 and 8 of the POCSO Act. After investigation, the Charge-sheet was filed and the Applicant/Appellant came to be convicted and sentenced after trial.

4. There is no serious doubt that, the Victim was the Child on the day of incident i.e. 04.03.2022. There is delay of 18 days in

reporting the incident to the Police. The identity of the person committing the Crime is disputed by the Appellant. The cross-examination of PW2 i.e. Victim's mother, show that her husband showed the picture from the mobile to the Victim and she identified the Applicant/Appellant. Though the evidence of Medical Officer indicate that, the Victim's hymen was ruptured, his cross-examination show that, he did not mention in the medical report that the hymen was ruptured. The CA report in respect of the articles i.e. MAT and the clothes, do not show any semen. This indicates that the Applicant/Appellant has *prima facie* good case on merits. The Applicant/Appellant is behind the bars for a period of two years and four months after the Judgment and was behind the bars for a period of six (6) months after registration of the Crime. The Appeal is of 2023 and would not come up for final hearing in the near future. Hence, I am inclined to suspend the sentence till the Appeal is finally heard. Hence, the following order:-

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the Spl/Addl. Sessions Judge, Parbhani, in Special Case No. 63/2022, by Judgment and Order dated 22.06.2023, is hereby suspended till the final decision of the Appeal. In the meantime, the Applicant be released on bail on his furnishing personal bond of Rs.15,000/- [Rupees Fifteen Thousand], with one or two surety/sureties in the like amount.

- [iii] The Applicant/Appellant shall not try to intimidate the Victim or the Witnesses in any manner.
- [iv] Bail before the Trial Court.
- [v] The Applicant shall cooperate in early disposal of the Appeal
- [vi] The Applicant/Appellant shall supply the private paper-book since the R&P is received.
- [vii] The Application stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde