

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

910 CRIMINAL APPLICATION NO. 2760 OF 2025
IN APEAL/1160/2023

Baliram Sitaram Chavan

VERSUS

The State Of Maharashtra And Other

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Mr. S. J. Salunke - Advocate for Applicant

Mr. A. D. Wange - APP for the State

Mr. Amol T. Jagtap - Advocate (appointed through legal aid) for
Respondent No. 2

...

CORAM : NEERAJ P DHOTE, J.

DATED : 17TH DECEMBER, 2025

PER COURT : -

1. This is an Application for suspension of the substantive sentence imposed upon the Applicant by the learned Special Judge (POCSO), Aurangabad, by Judgment and Order dated 30.10.2023 in Spl. Case (POCSO) No. 360 of 2022, convicting and sentencing the Applicant/Appellant as follows:

“Order

- 1) *Accused Baliram Sitaram Chavan is hereby convicted for the offence punishable u/sec.376-A, 506 of IPC and u/sec.4(2) and 6 of POCSO Act vide section 235(2) Cr.PC.*
- 2) *For commission of offence punishable u/sec.376-A IPC, the accused shall suffer rigorous imprisonment for twenty years and to pay a fine of Rs.10000/- (Rupees Ten Thousands Only), in default to suffer S.I. for two months.*

- 3) *For commission of offence punishable u/sec.506 IPC, he shall suffer rigorous imprisonment for one year and to pay a fine of Rs.3000/- (Rupees Three Thousands Only), in default to suffer S.I. for 21 days.*
- 4) *For commission of offence punishable u/sec.4(2) of POCSO Act, he shall suffer rigorous imprisonment for twenty years and to pay a fine of Rs.30000/- (Rupees Thirty Thousands Only), in default to suffer S.I. six months.*
- 5) *For commission of offence punishable u/sec.6(1) of POCSO Act, he shall suffer rigorous imprisonment for twenty years and to pay a fine of Rs.30000/- (Rupees Thirty Thousands Only), in default to suffer S.I. six months.*
- 6) *The accused shall undergo all sentences of imprisonment concurrently.*
- 7) *Period of detention of accused in jail, if any be given in set off u/sec.428 Cr.P.C. as per rule.*
- 8) *The accused shall pay total fine of Rs.73000/- (Rupees Seventy three Thousands Only). Out of the fine amount deposited, an amount of Rs.30000/- (Rupees Thirty Thousands Only) be paid to the victim u/sec.4(3) of the said Act for her rehabilitation.*
- 9) *Muddemal property- clothes of victim as well as accused attached under panchanamas (Exh.18 & 19) being worthless be destroyed after expiry of appeal period vide Section 452 Cr.P.C.*
- 10) *Copy of judgment be given to the accused free of cost immediately.*
- 11) *Issue conviction warrant accordingly.
(Pronounced in open court)."*

2. The case of the Prosecution as revealed from the Police Papers made available on record is that, the Victim was a Child. The Applicant/Appellant was having his grocery shop nearby her house. On 21.09.2023, the Victim had gone to the Applicant's shop for bringing Biscuits and Bread. The Applicant/Appellant took the Victim inside the shop and thereafter inside his house. The Applicant inserted his penis in the mouth of the Victim and licked her private part. The Victim on returning home reported the incident to her mother. The incident was reported to the Police and Crime bearing No. 325 of 2022 came to be registered under various Sections of the Indian Penal Code [hereinafter referred to as 'IPC'] and the Protection of Children from Sexual Offences Act [for short 'POCSO'] against the Applicant. After the investigation, the Charge-sheet was filed and after the trial, the Applicant came to be convicted and sentenced as above.

3. It is submitted by the learned Advocate for the Applicant that, the evidence available on record was not sufficient to convict the Appellant. He submits that the spot *panchanama* shows that, the Applicant was residing along with his family members and, therefore, happening of such incident in his house is highly improbable. He submits that, the Applicant is behind the bars since registration of Crime and, therefore, the Application be allowed.

4. The Application is opposed by the learned APP and learned Advocate for the Respondent No. 2 / Victim. They submit that, the age of the Victim has been admitted by the Applicant/Appellant. The Victim has deposed the incident in her testimony before the learned Trial Court which find corroboration from the testimony of the Victim's mother, who lodged the report with the Police Station. They submit that, the presumption under Section 29 of the POCSO Act comes into play and the Applicant was unable to rebut the same. He submits that the learned Trial Court has rightly convicted and sentenced the Applicant and the Application be rejected.

5. The paper show that, the extract of the School admission wherein the Victim's name, her date of birth and other details are mentioned, has been admitted by the Applicant. In the answer to Question No. 2 in the statement under Section 313 of the Cr.PC., the Applicant admitted the date of birth of the Victim. From the admitted date of birth of the Victim and date of the Crime, it is established that the Victim was a Child. The Prosecution examined the Victim as PW2. Her testimony show that, the learned Trial Court put the necessary questions to her to ascertain whether she understands the sanctity of oath and, thereafter, recorded her testimony by observing that she was not aware of the sanctity of the oath. Her testimony was recorded in the question and answer form. She has deposed about the incident against

the Appellant / Applicant in clear terms. Nothing has come in the cross-examination so as to create any dent in her testimony. The history given by the Victim at the time of medical examination corroborate her testimony. The Victim's testimony *prima facie* makes out the case for the offences for which the Applicant/Appellant has been convicted. Immediately on the next date the incident was reported to the Police by the Victim's mother. Absence of injuries on the Victim will not be fatal. The spot *panchanama* is admitted by the Applicant/ Appellant. With this material on record, in my considered view, no case is made out for suspension of substantive sentence and bail. Hence, I pass the following order.

ORDER

- [i] The Application is rejected.
- [ii] The fees of the learned Advocate Mr. Amol T. Jagtap appointed to represent Respondent No. 2 / Victim, is quantified at Rs. 15,000/- [Rupees Fifteen Thousand], which shall be paid by the High Court Legal Services Sub Committee, Aurangabad Bench.
- [iii] R&P with Paper-book is awaited. Intimation be sent to the learned Trial Court to send the same at the earliest.

[NEERAJ P. DHOTE]
JUDGE

SG Punde