

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

19 CRIMINAL APPLICATION NO. 2785 OF 2025  
IN APEAL/883/2025

Prakash Manikrao Waghmare

VERSUS

The State Of Maharashta And Another

...

Mr. Abhinay D. Khot - Advocate [appointed through Legal Aid] for  
Applicant

Mr. A. D. Wange - APP for State

Mr. Sujit S. Kulkarni h/f Mr. M. D. Deshpande - Advocate for  
Respondent No. 2

...

CORAM : NEERAJ P DHOTE, J.

DATED : 15<sup>TH</sup> DECEMBER, 2025

PER COURT : -

1. This is an Application for suspension of sentence awarded by the learned Special Judge, Jalna, by Judgment and Order dated 18.10.2024 in Special Case No. 193 of 2023, convicting and sentencing the Applicant/Appellant as follows: -

*"ORDER*

1. *Accused Prakash Manikrao Waghmare, is convicted under section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 4 of the POCSO Act instead of section 6 of the POCSO Act and is sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs.10,000/- and in default of payment of fine to suffer S.I. for one year.*
2. *Accused Prakash Manikrao Waghmare, is convicted under section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 12 of the POCSO Act and is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment of fine to suffer S.I. for one month.*
3. *Accused Prakash Manikrao Waghmare, is convicted under section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 376(2)(n) of the Indian Penal Code.*

*However in view of the sentence passed under section 4 of the POCSO Act no separate sentence is passed.*

4. *Accused Prakash Manikrao Waghmare, is convicted under section 235(2) of Code of Criminal Procedure of the offence punishable under Section 506(Part-I) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment of fine to suffer S.I. for one month.*
5. *Accused Prakash Manikrao Waghmare is hereby acquitted under Section 235(1) of the Code of Criminal Procedure Code of the offences punishable under sections 354-D and 376(3) of the Indian Penal Code.*
6. *All sentences to run concurrently.*
7. *Accused is entitled for the set off if any under Section 428 of the Code of Criminal Procedure for the period which he had remained behind the bars as under trial prisoner.*
8. *Out of realised fine amount of Rs.12,000/-, an amount of Rs.10,000/- (Rupees Ten thousand only) be given to the victim towards compensation.*
9. *The muddled property i.e. Article MO-1 Top, Article MO-2 Leggings and label, Article MO-3 Blue colour jeans pant and label, Article MO-4 Pink colour half sleeves T-shirt and label, Article MO-5 Light purple colour underwear and label, being worthless, be destroyed after expiry of appeal period.*
10. *Copy of this judgment be given to accused free of costs forthwith.*
11. *A copy of this order be also sent to the District Legal Services Authority, Jalna recommending appropriate compensation to the victim.*
12. *Issue conviction warrant accordingly.”*

2. The case of the Prosecution as noted in the impugned Judgment and Order, is reproduced as under: -

- “2. *The victim is a minor girl and at the time of the incident she was studying in the 7th std. and was 12 years of age. She and her younger brother were residing along with their parents.*
3. *On 03/07/2023, the mother of the victim had attended the household chores and had prepared the victim and her brother for school. Victim had refused to go to school as she was not well. Her mother found that she was tensed. Therefore she had*

*enquired with the victim as to why she was not going to school and not talking. Victim had told her that their neighbour Prakash Waghmare (accused) was following her since several days. On 05/06/2023 she was having May vacations. When everybody from the house had gone to the fields she was alone at home. Accused had come home and enquired about her parents and she had told accused that they had gone to the fields. Accused had told the victim that he had some work with her and took her to his house. He had closed the door of his house and removed the clothes of the victim and his own clothes and had taken forcible sexual intercourse with the victim. He had threatened the victim of dire consequences if she disclosed the incident to anybody. The victim was scared and had therefore not told anybody about the incident. On 01/07/2023 accused had gone to the house of victim as she was alone. He had given her some artificial ear rings and had again committed forcible sexual intercourse with her twice. He had told the victim that she should go to his house whenever he calls her and that she should not go to school. He had also threatened her to kill her and her family members if she disclosed the incident to anybody. The informant had taken the victim to the police station and she has lodged the complaint Exh.1/PW-1.*

4. *On the complaint lodged by the informant, offence was registered at C.R.No.185/2023 and it was marked to Police Sub-Inspector Kadam (PW-4) for investigation. He had gone through the First Information Report and the complaint. He had visited the spot and prepared the spot panchanama Exh.P-1/PW-3. He had obtained the documents regarding the age of the victim. He had seized the clothes of the victim vide seizure panchanama Exh.P-3/PW-3. He had arrested the accused and had seized the clothes of accused vide panchanama Exh.P-4/PW-3. After carrying out the usual investigation, he had filed the chargesheet against the accused in this Court, this being the Special Court under the POCSO Act.”*

3. It is submitted by the learned Advocate for the Applicant that there are improvements in the testimony of the Victim and her mother, who lodged the report. The learned Trial Court discarded the school record of the Victim and considered the Victim’s age as 17 years on the basis of ossification test. The testimony of the Victim was not of sterling quality. The Prosecution has not established that the Applicant

was capable of having sexual intercourse. The Charge was initially framed for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act [for short 'POCSO Act'], however, the Conviction was recorded for the offence punishable under Section 4 of the POCSO Act, and no time was given to the Applicant/Appellant to make submissions in respect of the sentence. When the learned Trial Court has considered the age of the Victim as 17 years, the punishment for twenty (20) years for the offence punishable under Section 4 of the POCSO Act is contrary to law as the said sentence of 20 years would attract only if the Child is below 16 years of age. The Applicant/Appellant has a good case on merits. The Applicant/Appellant is behind the bars for a period of two (2) years and five (5) months. The Appeal would take its own time and, therefore, the Application be allowed.

4. It is submitted by the learned APP for the State and the learned Advocate for Respondent No. 2 that, the ossification test was conducted after a period of one year from the date of offence and, therefore, one year will have to be reduced from the age bracket determined by the ossification test. No questions were put by the defence to the witnesses that the Appellant was not potent. The Victim has deposed about the incident against the Appellant who was 35 years of age at the time of offence. The medical evidence supports the

testimony of the Victim. While considering the evidence on record, the learned Trial Court has rightly convicted and sentenced the Appellant and no case for suspension of sentence is made out.

5. With the assistance of both the sides, I have gone through the relevant evidence on record. The learned Trial Court in the impugned Judgment has observed that, the date of birth entered in the admission register cannot be relied upon as the proof of age of the Victim. By considering the ossification test report, the learned Trial Court has considered the age of the Victim as 17 years on the date of incident. Therefore, it is clear that the Victim was above 16 years of age. If we consider the provisions of Section 4 of the POCSO Act, the minimum sentence of imprisonment for commission of penetrative sexual assault is not less than ten (10) years, which may extend to imprisonment for life and also with fine. Sub-section 2 of the said Section provides that, the minimum sentence of 20 years would attract if the act of penetrative sexual act is committed on the child below the age of 16 years. Thus, *prima facie*, I find merit in the submission of the learned Advocate for the Applicant that, by sentencing the Applicant for twenty (20) years rigorous imprisonment for the offence punishable under Section 4 of the POCSO Act, the learned Trial Court misdirected itself.

6. The Prosecution has examined the Victim as PW2. Her testimony show that, her testimony in respect of the incident was an improvement. The said improvement is on material aspect. Similarly, the evidence of the mother of the Victim, who was examined as PW1, who is of course not an eye-witnesses to the incident, show that, her testimony was also an improvement on material aspect.

7. There is medical evidence brought on record by the Prosecution through PW5, who examined the Victim on 04.07.2023. He noted that the hymen was ruptured (old healed) and he provisionally opined that, the possibility of sexual intercourse cannot be ruled out. At the same time, in his cross-examination, it has come that the hymen can be ruptured by various sports activities. Further, though the Investigating Officer, who is examined as PW4, deposed that the Applicant was medically examined, there is no evidence to show that the Appellant was capable of having sexual intercourse.

8. The Applicant/Appellant is behind the bars for a period of two (2) years and five (5) months. The Applicant/Appellant has made out arguable case and *prima facie* have a good case on merits. In this view of the matter, I am inclined to pass the following order: -

**ORDER**

[i] The Application is allowed.

- [ii] The sentence imposed upon the Applicant by the learned Special Judge, Jalna, *vide* the impugned Judgment and Order dated 18.10.2024 in Special Case No. 193 of 2023, is hereby suspended till the final decision of the Appeal.
- [iii] The Applicant be released on bail on his furnishing personal bond of Rs.15,000/- [Rupees Fifteen Thousand], with one or two sureties in the like amount.
- [iv] The Applicant/Appellant shall cooperate in early disposal of the Appeal.
- [v] Bail before the Trial Court.
- [vi] For this Application, the fees of Mr. Khot, learned Advocate appointed to represent the Applicant, is quantified at Rs.15,000/- [Rupees Fifteen Thousand], which shall be paid by the High Court Legal Services Sub Committee, Aurangabad Bench.
- [vii] The Application stands disposed off.

**[NEERAJ P. DHOTE]**  
**JUDGE**

SG Punde