



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 CRIMINAL APPLICATION NO. 3658 OF 2024
IN
CRIMINAL APPEAL/1095/2024

GANESH SUNIL SALVE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Menezes Joslyn A

APP for Respondent/State: Mr. V. M. Jaware

Advocate for Respondent No.2 :

Mr. V. M. Lomte (*Appointed Through Legal Aid*)

...

WITH

CRIMINAL APPEAL NO. 1095 OF 2024

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 23.07.2025

P.C. :

1] Heard.

2] The present application is filed by the applicant for suspension of substantive sentence imposed on him in Special Case (POCSO) No.04/2021, dated 22.02.2024, by learned Special Judge (POCSO), Aurangabad. The applicant has been convicted thus:

"1) Accused Ganesh Sunil Salve is hereby convicted for the for the offence punishable u/sec. 363, 376(2) (n), 506 of IPC and u/sec.4, 8 and 12 of POCSO Act vide section 235(2) Cr.P.C.

2) For offence punishable u/sec.363 IPC, the accused

shall suffer rigorous imprisonment one year and shall pay a fine of Rs.5000/- (Rupees Five Thousands Only), in default to suffer S.I. for one month.

3) For offence punishable u/sec.376(2) IPC, the accused shall suffer rigorous imprisonment for ten years and shall pay a fine of Rs.10000/- (Rupees Ten Thousands Only), in default to suffer S.I. for two months.

4) For offence punishable u/sec.506 IPC, the accused shall suffer simple imprisonment for three months and shall pay a fine of Rs.500/- (Rupees Five Hundreds only) in default to suffer S.I. for three days.

5) For offence punishable u/sec.4(2) POCSO Act, the accused shall suffer rigorous imprisonment for twenty years and shall pay a fine of Rs.30000/- (Rupees Thirty Thousands only) in default to suffer S.I. for six months.

6) For offence punishable u/sec.8 of POCSO Act, the accused shall suffer rigorous imprisonment for three years and shall pay a fine of Rs.5000/- (Rupees Five Thousands Only), in default to suffer S.I. for one month.

7) For offence punishable u/sec.12 of POCSO Act, the accused shall suffer rigorous imprisonment for six months and shall pay a fine of Rs.1000/- (Rupees One Thousand Only), in default to suffer S.I. for one week.

8) The accused shall undergo all the sentences of imprisonment concurrently.”

3] The learned counsel for the applicant / appellant submits that, at the relevant time, it is alleged that the applicant / appellant was 22 years of age and the victim was 15 years 8 months age.

4] The learned counsel submits that the applicant / appellant has been convicted for 20 years however, the evidence in regard to the forceful sexual intercourse with victim is not of clear quality and is doubtful. He also submits that the age of the victim is also not appropriately established as required under law. He has been taken me through paragraph no.30 of the Judgment, more particularly, the below noted portion:

“30...So the evidence of P.W.1 victim in respect of committing forceful physical relations by the accused with her in those two days during night requires to be accepted though the medical evidence is not supporting to the prosecution, for the reasons that the medical examination of victim was conducted after 2 days and 12 hours after the forceful physical relations. She was not medically examined within 24 hours of committing forceful physical relations. At the time of incident the victim was of 15 years, as is observed in point no.1 above....”

5] The learned counsel has also taken me through the history narrated to the Doctor by the victim, wherein she has stated to the Doctor as under:

“As per incident narrated by survivor Shruti Suresh Gangatire age 15 years 8 months resident of Ramnagar, Bidkin, Paithan, the assailant Ganesh Sunil Salve, 22 years was survivor’s neighbour 2 years back and assailant proposed to survivor 1 year back and assailant shifted to other place 1 year back and kept in touch with survivor telephonically. Survivor got engaged to some other guy 8 days back when assailant accused survivor for betraying him and threatened her to commit suicide and kill her and forcefully eloped the survivor on 25/10/2020 and they went to ‘Pahegaon’ and stayed there in private room for 2 days and worked in a nearby Appa’s Brick

furnace. Survivor gives history of attempt of sexual intercourse but does not give history of penetration on these 2 days. Last sexual intercourse happened on 29/10/2020 12 am midnight and both were caught by police on 30/10/2020 evening.”

6] The Doctor in her history has recorded that Survivor gives history of attempt of sexual intercourse but does not give history of penetration and the last sexual intercourse happened on 29.10.2020. In the medical report, it is stated that there is no fresh injury to the victim, the swabs were collected, the CA report was also received. The relevant portion of the CA report is mentioned at paragraph no.27 of the Judgment, which reads as under:

“27....The C.A. report (Exh.1) torn petticoat of victim which was attached by the police from the victim to which the blood having “B” group was found. The blood group “B” is of the victim as per C.A. report (Exh.34). No blood or semen found on the other clothes of victim as well on the clothes of accused....”

7] The learned counsel for the applicant submits that as regards the forceful sexual intercourse, the CA report, so also, the medical report, so also, the victim’s narration of history to the Doctor does not give clear evidence of sexual intercourse and, although, the offence, at best, can be said that they had been eloped together and stayed together and that there is no offence of sexual intercourse.

8] Per contra, the learned counsel for the victim

submits that the actual conviction ought to have been under Section 5(2)(L) of the Act and the trial court has erroneously convicted the applicant / appellant under Section 4(2) of the POCSO Act. The learned APP submits that the victim was under 16 years of age and, therefore, he was appropriately convicted for 20 years 4(2) of the POCSO Act.

9] Having considered the rival submissions and having noted the observations of the trial court, so also, the observations as noted above, so also, the observations of the narration of the medical history to the Doctor and considering the same there is doubt as regards the actual forceful sexual intercourse as alleged. In the statement of the victim, she has mentioned that there was sexual intercourse but there was nothing further mentioned on that aspect, considering the above, i.e. the victim's statement, history narrated to the Doctor, so also, the medical evidence, the applicant has arguable case on merits that there was no sexual intercourse. The applicant is in jail for 18 months and 26 days and as the appeal would take substantial time for final hearing, the appeal can be admitted and sentenced can be suspended.

10] In view of the above, the Criminal Appeal No.1095 of 2024 is **admitted**.

11] Considering the above, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentence imposed on the applicant in Special Case (POCSO) No.04/2021, dated 22.02.2024, by learned Special Judge (POCSO), Aurangabad, stands suspended till the final hearing and disposal of Criminal Appeal.

iii] The applicant be released on bail on furnishing P.R. bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial court.

iv] Bail before the trial Court.

**[ARUN R. PEDNEKER]
JUDGE**

marathe