



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

930 CRIMINAL APPLICATION NO. 3168 OF 2025
IN APEAL/512/2024

Moru Alias Moreshwar Namdeo Rathod

VERSUS

The State Of Maharashtra And Another

...

Mr. Jadhav S. Jadhav - Advocate for Applicant

Mr. B. B. Bhise - APP for State

Ms Shilpa Magre - Advocate (appointed) for Respondent No. 2

...

CORAM : NEERAJ P. DHOTE, J.

DATED : 14TH OCTOBER, 2025

PER COURT : -

1. This is an Application for Suspension of Substantive Sentence imposed upon the Applicant/Appellant [for short "Applicant"] by the learned Special Judge (POCSO), Aurangabad, in Spl. Case (POCSO) No. 396 of 2022, by Judgment and Order dated 13.03.2024, convicting the Applicant as follows: -

"Order

- 1) *Accused Moru @ Moreshwar Namdeo Rathod is hereby convicted for the offence punishable u/sec.376(2), 452 of IPC and u/sec.4, 8 and 12 of POCSO Act vide section 235(2) Cr.PC.*
- 2) *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.*
- 3) *For offence punishable u/sec.452 IPC, 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 months.*

- 4) *For offence punishable u/sec.4(1) POCSO Act, the accused shall suffer rigorous imprisonment for ten years and shall pay a fine of Rs.30000/- (Rupees Thirty Thousands only) in default to suffer S.I. for six months.*
- 5) *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.*
- 6) *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.*
- 7) to 12)"

2. The case of Prosecution, in brief, is that the Victim was intellectually disabled and 17 years of age. The Victim was residing with her mother and brothers. On 25.10.2022, when the Victim's mother left for work, and her brothers left home for grazing cattle, the Victim was alone in the house. The Applicant, who is the resident of same village i.e. Hiwarkheda, Taluka Kannad, District Aurangabad, entered the house of the Victim and raped her. In the meanwhile, the Victim's brother came and saw the act. The Applicant managed to escape. The incident was reported to Kannad (City) Police Station and Crime bearing No. 312 of 2022 came to be registered for the offences under the Indian Penal Code and the Protection of Children from Sexual Offences Act. The Applicant came to be arrested. Investigation was done. The Applicant was Charge-sheeted and after trial, he came to be

convicted as above.

3. Heard the learned Advocate for the Applicant, the learned APP for the State and the learned Advocate for Respondent No. 2 / Victim. With the assistance of the learned Advocate for the parties and the APP, seen the evidence on record.

4. Though the age of the Victim is not proved as required under law, as can be seen from the evidence on record, there is no dispute that she was below 18 years of age. The evidence on record further go to show that, the Victim was suffering from moderate intellectual disability. The evidence of the Victim was recorded by the learned Trial Court with the help of translator. Though the Victim's evidence indicates the presence of the Applicant at her house, it shows that, the Victim was put down i.e. made to lie, her undergarment was removed and Applicant slept over her. The evidence of the brother of the Victim show that, he saw the Applicant committing sexual intercourse with the Victim. Admittedly, the Prosecution has not examined the Doctor, who had medically examined the Victim after the incident. Therefore, there is absence of medical evidence to corroborate the aspect of sexual intercourse with the Victim. I find substance in the contention of the learned Advocate for the Applicant that, with the available evidence on record, the offence of rape, penetrative sexual

assault is not made out and so the punishment under the law will not exceed above five (5) years even if the evidence is taken as it is. The paragraph number 35 in the impugned Judgment and Order reads as under : -

“35] In view above facts an inference requires to be drawn that the present accused resides nearby the house of victim in the same village Hiwarkheda. So he was aware about the mental condition of the victim girl. He was aware that all family members in the house of victim girl go for work and the victim alone remains at home. Then he entered in the house of informant when the victim was alone at the house and he committed physical relations with the victim who was incapable of giving consent and who was suffering from mental disability. It is true that the medical evidence in respect of rape and penetrative sexual assault is not supporting to the case of prosecution, still then even if there is no medical evidence, the ocular evidence which is in the form of direct evidence of P.W.6 Vishal Rathod the brother of victim would prevail over the medical evidence which is not substantive piece of evidence. So the act of accused would amount to committing rape, penetrative sexual assault, sexual assault and sexual harassment upon the victim. So I hold that prosecution succeeded to prove that accused committed rape upon the victim punishable u/sec.376(2)(j)(I) IPC and committed penetrative sexual assault, sexual assault and sexual harassment upon the victim punishable u/sec.4, 8 and 12 of of POCSO Act. So I answer Point no.2 & 4 to 6 in the affirmative.”

5. The above observation made by learned Trial Court shows that, on the basis of inference the Charge is held to be proved. The maximum punishment awarded by the learned Trial Court to the Applicant is ten (10) years. The Applicant is behind the bars for little short of three (3) years. The Appeal would not come up for final

hearing in the near future. Hence, I pass the following order : -

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the learned Special Judge (POCSO), Aurangabad, in Spl. Case (POCSO) No. 396 of 2022, by Judgment and Order dated 13.03.2024, is hereby suspended till the final decision of the Appeal. In the meantime, the Applicant-Accused be released on bail on his furnishing personal bond of Rs.25,000/- [Rupees Twenty Five Thousand], with one surety in the like amount.
- [iii] The Applicant shall not tamper with the prosecution evidence in any manner, whatsoever.
- [iv] The Applicant shall not leave the place of his residence without intimation to this Court.
- [v] The Applicant/Appellant shall cooperate in early disposal of the Appeal.
- [vi] Bail before the Trial Court.
- [vi] The Application is disposed off.
- [vii] The fees of learned Advocate Ms Shilpa Magre appointed to represent Respondent No. 2 is quantified at Rs. 10,000/- (Rupees Ten Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

[NEERAJ P. DHOTE]
JUDGE

SG Punde