



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

CRIMINAL APPLICATION NO. 3222 OF 2025
IN
CRIMINAL APPEAL NO. 31 OF 2025

Anil Rohidas Acharya

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr. Mohit L. Deoda and Mr. Pavan M. Salunke - Advocate for Applicant

Mr. M. K. Goyanka – APP for the State

Mr. G. D. Jain – Advocate Appointed through Legal Aid for Respondent
No. 2

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CORAM : NEERAJ P DHOTE, J.

DATED : 07TH OCTOBER, 2025

PER COURT : -

1. This is an Application for Suspension of Substantive Sentence awarded by the learned Special Judge, Ahmedpur, *vide* the Judgment and Order dated 13.09.2024, passed in Special Case (POCSO) No. 19/2023, convicting and sentencing the Applicant as follows: -

“1] Accused Anil Rohidas Acharya is convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 he is sentenced to suffer rigorous imprisonment for twelve years and to pay fine of Rs. 15,000/- (Rupees Fifteen Thousand only), in default, to undergo rigorous imprisonment for one year.

2] Accused is convicted for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 he is sentenced to suffer rigorous

imprisonment for three years and to pay fine of Rs.15,000/- (Rupees Three Thousand only), in default, to undergo rigorous imprisonment for six months.

3] *Accused is convicted for the offence punishable under Section 354(D) of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default, to undergo rigorous imprisonment for six months.*

4] to 7]”

2. The case of the Prosecution, in brief, is that, in the night of 14.08.2023, the Applicant entered the house of the Victim and raped her. As the Victim's father got up, he knocked the door, however, it was not opened. Therefore, he locked the door from the outside and called Police. Thereafter, the lock was opened and the Applicant was found in the room and the Victim was lying. The report was lodged with the Police and Crime bearing No. 0211 of 2023 came to be registered with Kingaon Police Station, District Latur, against the Applicant, for offences punishable under Sections 376(2)(n), 376(3), 354-A, 323, 506 of the Indian Penal Code and Sections 3, 4, 5(L), 6 and 11(4) of the Protection of Children from Sexual Offences Act, 2012. The Victim was referred for medical examination. The investigation was undertaken. The Applicant was Charge-sheeted. After the trial, the Applicant came to be convicted as above.

3. Heard learned Advocate for the Applicant, learned APP for the State and the learned Advocate for Respondent No. 2 / Victim.

4. The Victim is examined as PW4. According to her, the Applicant used to send her letters, expressed love towards her and demanded sexual favours, to which the Victim denied. The Applicant used to threaten the Victim saying that, he would inform her father that she had an affair with some person. The Victim did not inform her father in this regard. On 13.08.2023, as the Victim's grand-mother had gone to Udgir for operation of her grand-father, the Victim and her father were present at the house. In the night of 14.08.2023, the Victim's father went to sleep. Around 10:00 pm, when the Victim was watching T.V., she heard knock on the door and when she opened the door, the Applicant entered the house and by threatening her, committed sexual intercourse with the Victim. Thereafter, the Victim's father and the Police knocked the door which was opened.

5. As per the Prosecution, the Victim was minor aged 14 years and some months at the time of incident. It has come in the evidence of the Victim's father, that the Victim was born in Kalamb, District Osmanabad, however, in the school record, which is brought in the evidence of PW6 i.e. the Headmaster of School, the place of birth of the Victim is shown as Kopara, Taluka Ahmedpur. The Prosecution has brought on record the relevant school extract showing the date of birth

of the Victim as 26.10.2009 in the evidence of PW6, who was the Headmaster of the School. So far as the age of the Victim is concerned, the learned Trial Court observed as under : -

“15. In the present case, the birth certificate is not forthcoming on record, there is a inconsistency in regard to the birth place as recorded in extract of admission register and narration made by father of victim so no concrete place of birth is proved by the prosecution. According to the prosecution, the age is around 14 years. According to the accused her age is 16 years. So want of birth certificate on record the age of victim is proved as 16 years.”

6. The Applicant had given suggestion to the Victim's father that, the age of the Victim was above 16 years. From the discussion of the learned Trial Court reproduced above, it is clear that there was no acceptable evidence on record to prove the date of birth and the age of the Victim on the day of the above referred incident.

7. The cross-examination of the Victim shows that, in a statement recorded under Section 164 of the Cr.P.C. before the learned Magistrate, she stated that, she received a message from the Applicant at 10:00 p.m., asking her to open the door. The evidence of the Victim's father shows that, he did not hear any alarm from his house. This evidence on record is suggestive of consensual sexual relation between the Applicant and the Victim. The injuries found on the left cheek of the Victim itself will not be suggestive of only conclusion that, the sexual act was against the wish and will of the Victim. No more discussion is required.

8. The Applicant has a good case on merits. The Applicant is behind the bars for little over two (2) years. The sentence awarded is term sentence. The Appeal is not likely to be heard in the near future. Therefore, I am inclined to suspend the substantive sentence. Hence, the following order : -

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the learned Special Judge, Ahmedpur, vide the Judgment and Order dated 13.09.2024 passed in Special Case (POCSO) No. 19/2023, 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 surety in the like amount.
- [iii] The Applicant shall attend the concerned Police Station once in a month i.e. on the last Friday of each month between 10:00 am to 12:00 pm., till the Appeal is finally decided.
- [iv] The Applicant shall cooperate in early disposal of the Appeal.
- [v] Bail before the Trial Court.

[vi] The fees of the learned Advocate appointed to represent the Respondent No. 2 / Victim is quantified at Rs. 10,000/- [Rupees Ten Thousand] for this Application. The said fees be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

[NEERAJ P. DHOTE]
JUDGE

SG Punde