



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO. 3783 OF 2024
IN APEAL/801/2024

PAWAN @ DASHRATH S/O MAROTI BOGDAWARI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Shailendra Sharadchandra Gangakhedkar, Advocate for Applicant;
Mr. B. A. Shinde, APP for Respondent No.1-State;
Ms. Sayali Tekale, Advocate appointed for Respondent No.2.

...

CORAM : NEERAJ P DHOTE, J.

DATE : 23rd DECEMBER, 2025

PC.:-

1. This is an Application for suspension of sentence imposed by the learned Additional Special Judge (POCSO), Biloli in Sessions (POCSO) Case No.04 of 2022 by judgment and order dated 27.06.2024, convicting and sentencing the Applicant/Appellant as follows:-

- “1. The accused **Pawan @ Dashrath s/o Maroti Bogdawari**, is held guilty under Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Sections 377 of the Indian Penal Code, 1860 and Sections 5(i) and 5 (m) read with Section 6 of the POCSO Act, 2012.
2. Accused is sentenced to undergo Rigorous Imprisonment for the period of 10 years (Ten) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousands only) for an offence punishable under Section 377 of the Indian Penal Code. In default to pay the amount of fine, he shall suffer rigorous imprisonment for 02 months.
3. Accused is further sentenced to undergo Rigorous Imprisonment for the period of 20 years (Twenty) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousands only)

for an offence under section 5 (i) punishable under Section 6 the Protection of Children from Sexual Offences Act, 2012. In default to pay the amount of fine, he shall suffer rigorous imprisonment for Two months.

4. *No separate sentence is imposed for the offence under Section 3 punishable under section 4 and under section 5(m) of the Protection of Children from Sexual Offences Act, 2012.”*

2. The case of the prosecution in brief is that, the Informant's minor son was sexually assaulted by the Applicant/Appellant by committing anal intercourse with the child behind the School on 06.12.2019. After the incident, the child went home and disclosed the incident to her mother. The incident was reported to Degloor Police Station by the child's mother and crime bearing No.463 of 2019 came to be registered against the Applicant/Appellant for the offences punishable under Section 377 of the Indian Penal Code (IPC) and Sections 3, 4, 5 (l)(m)(n) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). After the investigation, the charge-sheet was filed and after the trial, the Applicant/Appellant came to be convicted as above.

3. Heard learned Advocate for the Applicant/Appellant, learned APP for the Respondent-State and learned Advocate for Respondent No.2-Victim. With their assistance, perused the evidence on record.

4. There is no evidence on record to show that the Victim was a child as defined under Section 2(d) of POCSO Act. The learned APP

admits that no evidence was led to establish the date of birth and age of the Victim. The Victim in his evidence deposed that, due to the act, he suffered bleeding injury and blood stains came on his pant. The C.A. report do not show any blood stains on the Victim's clothes. The injury on the anus of the Victim in the nature of abrasion is shown in the medical evidence. It has come in the cross-examination of the Medical Officer that, the abrasion found on the anus of the Victim was as possible, if that part of the body comes into contact with hard and blunt object. These vital aspects show that, the Applicant/Appellant is having prima-facie good case on merits. Since, there is no evidence of the age of the Victim, there is a possibility that the conviction under the provisions of the POCSO Act may not sustain. If that be so, what remains is the punishment of 10 years for the offence punishable under Section 377 of IPC. The Applicant/Appellant is behind bars for the period above 5 years. There is no possibility that the Appeal may be heard finally in near future. In this view of the matter, I proceed to pass the following order:-

ORDER

- (i) The Application is allowed.
- (ii) The substantive Sentence imposed by the learned Additional Special Judge (POCSO), Biloli in Sessions Case No.04 of 2020 vide the Judgment and order dated

27.06.2024 on the Applicant, by name, Pawan @ Dashrath S/o. Maroti Bogdawari, for the offence punishable under Section 377 of the Indian Penal Code (IPC) and Sections 3, 4, 5 (l)(m)(n) and Section 6 of POCSO Act, is suspended during pendency of the Appeal.

- (iii) Applicant - Pawan @ Dashrath S/o. Maroti Bogdawari be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- (iv) The Applicant–Appellant shall co-operate in early hearing of the Appeal.
- (v) Bail before the Trial Court.
- (vi) Fees of the learned Advocate Ms. Sayali Tekale appointed through legal aid to represent Respondent No.2 is quantified at Rs.10,000/- (Rs. Ten Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.
- (vii) Application stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)