



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

4 CRIMINAL APPLICATION NO. 3583 OF 2025
IN APEAL/679/2025

Balasaheb Jagannath Rokade

VERSUS

The State Of Maharashtra And Another

...

Mr. Sandesh D. Jadhav - Advocate for Applicant

Mrs. Ashlesha S. Deshmukh - APP for State

Mr. A. P. Deshmukh – Advocate for Respondent No. 2 / Victim

...

CORAM : NEERAJ P DHOTE, J.

DATED : 24TH NOVEMBER, 2025

PER COURT : -

1. This is an Application for suspension of sentence imposed by the learned Additional Sessions Judge, Sangamner, against the Appellant, in Special Case No. 11/2019 by Judgment and Order dated 19.08.2025. The operative order of the said Judgment reads as under: -

“O R D E R

1. *Vide section 235 (2) of the Code of Criminal Procedure, the accused Balasaheb Jagannath Rokade is convicted for the offence punishable under Section 363 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for the period of Three Years and shall pay fine of Rs. 1,000/- in default of payment of fine to suffer Rigorous Imprisonment for the period of Six months.*
2. *Vide section 235 (2) of the Code of Criminal Procedure, the accused Balasaheb Jagannath Rokade is convicted for the offence punishable under Section 366 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for the period of Five Years and shall pay fine of Rs. 1,000/- in default of payment of fine to suffer Rigorous Imprisonment for the period of Six months.*
3. *Vide section 235 (2) of the Code of Criminal Procedure, the accused Balasaheb Jagannath Rokade is convicted for the offence*

punishable under Section 376 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for the period of Ten Years and shall pay fine of Rs. 2,500/- in default of payment of fine to suffer Rigorous Imprisonment for the period of Six months.

4. *Vide section 235(2) of the Code of Criminal Procedure the accused Balasaheb Jagannath Rokade is convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer Rigorous Imprisonment for the period of Seven Years and shall pay fine of Rs.2,500/- in default of payment of fine to suffer Rigorous Imprisonment for the period of One year.*
5. *All the aforesaid sentences shall run concurrently.*
6. *The accused Balasaheb Jagannath Rokade was in jail since 17/03/2019 to 11/11/2019, the said period undergone by him shall be given as set off U/Sec.428 of Cr.PC.*
7. *The whole fine amount in sum of Rs. 7,000/- imposed upon the accused, upon its recovery, shall be applied in the payment to the victim as part of compensation for the injury caused to her by the offence.*
8. *The District Legal Service Authority, Ahmednagar is recommended to award compensation to the victim under Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 and same shall be in addition to the compensation awarded by this court under section 357(1) of Cr.PC.”*

2. Heard the learned Advocate for the Applicant/Appellant, learned APP for the State and the learned Advocate for the Respondent/Victim. With their assistance, perused the relevant evidence on record.

3. The paragraph nos. 2 and 3 from the impugned Judgment, showing the Prosecution's case, are reproduced as under :-

- 2] The prosecution case, narrated shortly, is that the informant- PW.1's daughter-the victim (PW.2), aged 16 years and 10 months had left the house at about 11:00

am on 13/3/2019 along with her friend namely Vaishnavi as the later had work in the Union Bank, Sangamner branch. The victim did not return till 02:30 pm and so the informant- PW.1 telephonically inquired about the victim's whereabouts with her friend Vaishnavi, who told her that after completion of the bank work, the victim (PW.2) had returned home. The victim (PW.2) had not returned home and so the informant-PW.1 searched for her in the vicinity of the Sangamner City, but she was not found. She suspected that someone had kidnapped her daughter-the victim (PW.2) and therefore, she lodged the report Exh.43 with Sangamner City Police Station against unknown person.

- 3] On the basis of report, crime was registered vide CR.No.I-173/2019 against the unknown person for the offence punishable under sections 363 of the Indian Penal Code. Thereafter, during the investigation the victim (PW.2) was found by Tulinj Police Station in the vicinity of Nalasopara. Thereupon, the police brought her back to the Sangamner City Police Station. Upon inquiry with her, she told that the accused No.1 Balasaheb forcibly took her to Pune and then to Nalasopara and had repeatedly committed rape upon her against her will. The police recorded her statement and thereafter added the Sections 366, 376 of The Indian Penal Code, 1860 and Section 4, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 to the offence.

4. The judgment cited by the learned APP in *CIDCO Versus Vasudha Gorakhnath Mandevlekar, (2009) 7 SCC 283*, is in respect of service law, wherein it is observed that the birth evidence maintained by the statutory authorities raises the presumption of correctness. The learned Advocate for the Victim cited the Judgment of this Court dated 3rd October, 2019 in Criminal Appeal No. 734 of 2018, wherein the date of birth of the Victim was deposed by her Mother and further the birth certificate was brought on record. It is not so in the case at hand. Being the case under POCSO, the Prosecution is duty bound to establish the age of the Victim.

5. In the case at hand, the Conviction is also recorded for the offence punishable under POCSO Act. To prove the date of birth and age of the Victim, the Prosecution relied only on the copy of the birth certificate issued by Nagar Parishad, Sangamner. It is brought on record in the evidence of Investigating Officer. Admittedly, the date of issuance of birth certificate is 06.05.2019, which is after the date of incident and after the date of FIR. Except this, there is no evidence to establish the age of the Victim. *Prima facie*, it is clear from the record that the Prosecution failed to establish and prove the date of birth and the age of the Victim. Undisputedly, the evidence on record show that, at the time of incident i.e. in March-2019, the Victim was studying in 12th Std.

6. The testimony of the Victim show material omissions in her previous statement given to the Police in respect of the incident. The evidence of the Victim show that, she and the Appellant were studying in the same college and they were acquainted with each other. They used to go for picnic with friends and family members. It is therefore clear that they were friends. The Appellant at the relevant time was 22 years old. Though the medical evidence show that, the bruising and laceration were present on vulva, hymen was marginally ragged and tear posteriorly with mid-line hymen edges being congested, swollen and tendered and abrasion on her thighs of nail marks. PW5 i.e. Medical Officer, who examined the Victim, in her cross-examination deposed that, the Victim had not narrated the history of forceful sexual activities. The Medical Officer deposed that, in case of forceful sexual activities, resisted by the Victim, there would be resistance marks, bruises, scratch marks on the person attempting to have forceful sexual activities with the Victim. The same Medical Officer had examined the Appellant and did not find any resistance or scratch marks on his body. Considering the evidence on record, the evidence of the Victim do not appear to be concrete and not of sterling quality. The possibility of consensual relations between the Victim and the Appellant/Applicant cannot be ruled out.

7. The Applicant/Appellant was on bail during trial. The Appeal is of 2025 and is recently admitted. There is no possibility that it

would come up for final hearing in the near future. In view of the above discussion, I am inclined to suspend the sentence and grant bail to the Applicant/Appellant. Hence, I pass the following order:

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the learned Additional Sessions Judge, Sangamner, in Special Case No. 11/2019 by Judgment and Order dated 19.08.2025, is hereby suspended till the final decision of the Appeal. The Applicant be released on bail on his furnishing personal bond of Rs.15,000/-, with one surety in the like amount.
- [iii] Bail before the Trial Court.
- [iv] The fees of the learned Advocate Mr. A. P. Deshmukh appointed to represent Respondent No. 2 / Victim 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