

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

CRIMINAL APPLICATION NO.3642 OF 2025
IN

CRIMINAL APPEAL NO.743 OF 2025

Shivaji Asaram Kadam

....Applicant

Versus

The State of Maharashtra and Another

..Respondents

.....

Shri. Nasimoddin R. Shaikh, Advocate for the Applicant (appointed through Legal -Aid Committee)

Shri. A. D. Wange, APP for the Respondent - State.

Shri. Ashok Raut, Advocate for the Respondent No.2 (Appointed through Legal Aid)

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CORAM : NEERAJ P. DHOTE, J.

Dated : NOVEMBER 27, 2025

PER COURT :-

. This is an Application for Suspension of sentence imposed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.319/2022 by Judgment and order dated 14.01.2025 convicting the Appellant – Applicant for the offence punishable under Section 376(2)(l) of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for 10 (ten) years and fine of Rs.10,000/- (Rs. Ten Thousand only), in default to suffer Rigorous Imprisonment for six months.

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

3. The case of the Prosecution, in brief, is that, the Victim was mentally challenged and was raped by the Applicant – Appellant on 17.08.2019 at about 04:00 p.m. at secluded place in the village. The incident was seen by the Eye Witness and the Applicant fled. The Victim was taken to her house. The incident was reported to the Police and Crime bearing No.296/2019 came to be registered with the Paithan Police Station for the offence of Rape against the Applicant. After the investigation, the Applicant came to be Charge-sheeted and after full-fledged Trial came to be convicted as above.

4. Though it is the case of the Prosecution that the Victim was mentally challenged, there is no medical evidence in support of the same. PW1, who is the Brother of the Victim, in his evidence deposed that, he had not submitted any medical papers regarding mental condition of his Sister and also the Police did not demand for the same. The Victim was examined as PW4 before the learned Trial Court. The note put by the learned Trial Court before the testimony of PW4 records that she put some questions to the witness and the witness was mentally ill, but she was able to understand the nature of questions and the importance of oath, and therefore, oath was administered to her. The only evidence of the Victim was that, she was residing with her Mother and Brother and on that day she was taken to the temple.

Nothing has come in the evidence of the Victim. The evidence on record go to show that, the Statement of the Victim was recorded by the Police and also before the learned Magistrate in the presence of Special Teacher, who was examined as PW5. There is no concrete evidence to establish that the Victim was mentally challenged.

5. There is no dispute that the Victim was 29 years of age at the time of the incident. The medical evidence speak of the sexual intercourse. The case primarily rests on the testimony of PW2, who claims to be the Eye Witness to the incident. However, the incident is reported to the Victim's Brother by PW3 who was not the Eye Witness to the incident. The above discussion show that, the Applicant has arguable case on merits. The sentence imposed on the Applicant is a term sentence of 10 (ten) years. The Applicant is behind the bars for the period of 3 (three) years and 8 (eight) months. The Applicant is 60 years of age. The Appeal is of 2025 and there is no possibility that it could be heard finally in the near future. In this view of the matter, I am inclined to allow the Application. Hence, the following order is passed.

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant, namely, Shivaji Asaram Kadam, by the learned Additional Sessions Judge, Aurangabad, *vide* Judgment and Order dated 14.01.2025, passed in

Sessions Case No.319/2022, is hereby suspended till the final disposal of the Appeal.

(iii) The Applicant be released on bail on furnishing PR. bond of Rs.15,000/- (Rupees Fifteen Thousand), with one surety in the like amount.

(iv) The Applicant shall co-operate in early disposal of the Appeal.

(v) Bail before the Trial Court.

(vi) The fees of the learned Advocate for the Applicant appointed through legal aid is quantified at Rs.12,000/- (Rs. Twelve Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(vii) The fees of the learned Advocate for the Respondent No.2 appointed through legal aid 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.

(viii) Criminal Application stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)

GGP