

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

918 CRIMINAL APPLICATION NO. 4263 OF 2024
IN APEAL/928/2024

Abdul Mukhid Jainulaabedin Shaikh

....Applicant

VERSUS

The State of Maharashtra and Another

....Respondents

.....

Shri. Ganesh Asaram Gadhe, Advocate for the Applicant

Shri. C. V. Bhadane, APP for the Respondent / State.

Ms. Devyani S. Sonavane, Advocate for the Respondent No.2
(Appointed)

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CORAM : NEERAJ P. DHOTE, J.

Dated : SEPTEMBER 19, 2025

PER COURT :-

. This is the Application for Suspension of Sentence awarded by the Special Court in Special Case (POCSO) No.06/2023 *vide* Judgment and Order dated 19.09.2024, by which the Applicant / Appellant is convicted for the offences punishable under Sections 376-AB, 354-A of the India Penal Code (for short, 'IPC') and Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO') and sentenced to suffer 20 (Twenty) years of Rigorous Imprisonment with Fine of Rs.10,000/-, in default, 1 (One) Year Rigorous Imprisonment for Section 376-AB; 1 (One) year Rigorous Imprisonment with Fine of Rs.1000/- (Rs.One Thousand), in default, Rigorous Imprisonment for 1 (One) Month for Section 354-A; 20 (Twenty) years Rigorous Imprisonment with Fine of Rs.10,000/-

(Rs. Ten Thousand), in default, Rigorous Imprisonment for 1 (One) year for Section 6 of the POCSO; Rigorous Imprisonment for 3 (Three) Years with Fine of Rs.2000/- (Rs.Two Thousand), in default Rigorous Imprisonment for 2 (Two) months for Section 8; Rigorous Imprisonment for 5 (Five) Years with fine of Rs.2000/- (Rs. Two Thousand), in default, Rigorous Imprisonment for 2 (two) months. No separate sentence is awarded for the offence punishable under Section 4 and 12 of the POCSO.

2. The case of the Prosecution, in brief, is that, the Applicant – Appellant is residing in front of the house of the Informant. The Informant has two Daughters. The Victim was minor and aged 5 (five) years, 5 (five) Months and 7 (seven) days at the time of the incident. On 14.12.2022 the Victim was playing with the other minor. The Informant took search of the Victim and knocked the door of the Applicant's house. The Applicant informed her that, the Victim was playing with the mobile and so, she will not come. Thereafter, at 08:00 p.m. Victim returned home weeping and in frightened condition. On enquiry, she narrated that, the Applicant gave his mobile to her for playing and after removing her pant, he also removed his pant and licked her private parts and thereafter the Applicant licked his own private part. The informant narrated the incident to her Husband. On the next day morning, the Informant and her Husband questioned the Applicant about the incident. The informant approached the Police

Station and lodged the Report against the Applicant and Crime bearing No.0598/2022 came to be registered with Udgir Rural Police Station, Dist. Latur for the offences punishable under Sections 376AB, 354-A of the IPC, and Sections 8, 10 and 12 of the POCSO. After investigation, the Applicant was Charge-sheeted and after fulfilled Trial, he came to be convicted as above.

3. It is submitted by the learned Advocate for the Applicant that, before recording the testimony of the Victim, the learned Trial Court did not question her so as to ascertain her competency to give the evidence. The evidence do not show as to which questions were put to the Victim so as to ascertain that, she was competent enough to give the evidence as the child witness. The evidence of the Informant that, she knocked the Applicant's door and he informed her that the Victim was playing with the mobile and she left, is an unbelievable story, as no Mother will leave her minor daughter alone in the house of a lone male person. Evidence of the Victim show that she informed one Bharati Madam about the incident, however she is not examined by the Prosecution. The learned Trial Court on the basis of suspicion came to the conclusion that the Prosecution has proved the Charge. The identity of the Applicant was not established before the learned Trial Court as seen from the testimony of the Victim. The Medical Evidence do not corroborate the case of the Prosecution. The Applicant has been falsely implicated due to previous quarrel with the Informant. In support of his contention, he

cited the Judgement of the Hon'ble Supreme Court of India in *The State of Madhya Pradesh Vs. Balveer Singh*, 2025 LiveLaw (SC) 243 in respect of the evidentiary value and procedure of recording the testimony of the child witness. He further relied on the following Judgments in support of his submission that, even in such cases wherein 20 years sentence was imposed, this Court suspended the sentence as merit was found in the contention of the Appellant therein.

- (a) *Bhagwan Rama Shinde Gsai and Ors vs. State of Gujarat*, (1999) 4 SCC 421.
- (b) *Agniraj & Ors etc vs. State through Deputy Superintendent of Police CB-CID*, 2025 SCC OnLine SC 1203
- (c) *Rashid Sardar Baig vs. The State of Maharashtra and Another*, Criminal Application No.1422 of 2023 in Appeal/313/2023 decided on 12.06.2023.
- (d) *Mackvin Fernandes vs. The State of Goa*, Criminal Misc. Application NO.82 of 2023 (F) in Criminal Appeal NO.81 of 2023 decided on 13.02.2023.

3.1. He submitted that the Appeal will take its own time and the Applicant - Appellant is behind the bars for 2 (two) years and nine 9 (nine) months and therefore, he be released on bail.

4. The Application is opposed by the learned APP. He submits that the Victim was the child attending kindergarten (KG) and the law is well settled that, the conviction can be recorded on the testimony of the child witness. The evidence of the Victim was natural. There is consistency in the evidence of the Prosecution in support of the Charge. There was immediate FIR to the Police. The learned Trial Court has rightly

appreciated and considered the evidence on record and no case for Suspension of Sentence is made out and, hence the Application be rejected.

5. The Application is opposed by the learned Advocate appearing for Respondent No.2 – Victim. She submits that the learned Trial Court has appreciated the entire evidence on record. There is presumption in POCSO Act. The Applicant / Appellant failed to rebut the said presumption. The Prosecution examined in all Nine (9) Witnesses, which corroborate the testimony of the Victim. The conviction can be based on the testimony of the Child Witness. In support of her submission, she cited the Judgment in the *Dattu Ramrao Sakhare and Ors Vs. the State of Maharashtra, 1997 (5) SCC 341* in respect of competency and credibility of the testimony of the child witness and on the point that in absence of oath, evidence of the child witness can be considered under Section 118 of the Indian Evidence Act provided that, such witness is able to understand the questions and able to give rational answers thereof and the evidence of the child witness and the credibility thereof would depend upon the circumstances of each case. She also relied on the Judgment in the case of *Pradeep vs. The State of Haryana, AIR 2023 SC 3245* in support of her contention that, *it is well settled principle that corroboration of the testimony of a Child Witness is not a rule but a measure of caution and prudence. A child witness of*

tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness.

6. The testimony of the First Informant, who is Mother of the Victim, shows that, on 14.12.2022 the Victim had gone for playing with another Victim Bhaiya "V". She took search of the Victim for 2-3 times and knocked the door of the Applicant and the Applicant told her that, Victim was playing mobile and so she will not come. Her evidence show that, in the evening at 08:00 p.m. Victim returned home weeping and in threatened condition and when she asked the reason, she narrated the incident that the Applicant gave his mobile to her for playing and after removing her pant, also removed his pant and licked her private parts and thereafter the Applicant licked his own private parts. The place of residence of the Applicant as seen from the Spot Panchanama is a small room. *Prima facie* it appears strange that, though the Victim's Mother came to know that, the Victim was inside the room of the Applicant, she returned home without making any efforts to take the custody of the Victim from the Applicant. The evidence of the Victim show that, the Applicant used to do the same acts to her and Victim 'V' and used to not allow them to go outside. Admittedly, the said Victim 'V' is not examined by the Prosecution. According to the Victim, when Bharati Madam came towards their house, she narrated the incident to her. Admittedly, the said Bharati Madam is not examined by the Prosecution.

7. The above referred Judgments cited by both the sides are in respect of child witness. The recent Judgment of the Hon'ble Apex Court in *The State of Madhya Pradesh Vs. Balveer Singh (supra)* summaries the principles in respect of the child witness. The same are reproduced below :

“58. We summarize our conclusion as under:-

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.

(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is

his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.”

8. The evidence of the Victim show that, the learned Trial Court recorded that, ‘Many questions were asked to the witness, to ascertain whether she understands sensitivity of oath, but she is minor and she could not understand the importance of oath. Therefore, oath could not

be administered". The note recorded by the learned Trial Court, do not record its satisfaction as required under the law. Further, the Victim's evidence show that the Applicant's identity was tried to be established by showing the photograph of the Applicant pasted on the Charge-sheet as the Applicant was not produced before the Court on that day. The testimony clearly go to show that, the identification of the Applicant at the time of substantive evidence was not established by showing the Applicant to the Witness. *Prima facie* such identification of the Accused on the basis of photograph on the Charge-sheet will not stand the scrutiny of law. It has come in the cross-examination of the Victim that, prior to the incident there was quarrel between her Mother and the Accused.

9. The evidence of the Medical Officer, who was examined as PW2, show that, she examined the Victim and there was no injury on the private part of the Victim and her general condition was fair.

10. In the impugned Judgment, the learned Trial Court raised suspicion on the Applicant as he was bachelor of 48 years age and residing alone in the rented house. The learned Trial Court further observed that, the evidence that on knocking the door of the Applicant's house, he told that Victim was playing game on mobile and so she will not come, shows that, since the Applicant indulged in the act of licking the private parts of the Victim, he stated so.

11. The above aspects in the evidence of the Prosecution go to show that, there are arguable points in the Appeal and *prima facie* good case on merits. The Appeal is not yet Admitted. It is being Admitted today. The Appeal is not likely to be heard finally in the near future. The Applicant - Appellant is behind the bars for a period of two (2) years and nine (9) months. In this view of the matter, I am inclined to allow the Application and hence the following order.

ORDER

- (i) The Application is allowed.
- (ii) The substantive Sentence imposed by the learned Special Court in Special Case (POCSO) No.06/2023 *vide* Judgment and Order dated 19.09.2024 for the offences punishable under Sections 376-AB, 354-A of the IPC and Sections 4, 6, 8, 10 and 12 of the POCSO, on the Applicant, by name, Abdul Mukhid Jainulaabedin Shaikh, is suspended during pendency of the Appeal.
- (iii) The Applicant be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
- (iv) The Applicant shall attend Udgir Rural Police Station, Dist. Latur, once in the last week of every month between 05:00 p.m. to 08:00 p.m., until further orders.
- (v) Bail before the Trial Court.
- (vi) Fees of the learned Advocate Ms. Devyani S. Sonavane appointed to represent the Respondent No.2 is quantified at Rs.10,000/- (Rs. Ten Thousand) for the Application, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- (vii) The Application stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)

GGP