

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

CRIMINAL APPLICATION NO. 4024 OF 2023
IN
CRIMINAL APPEAL NO. 1052 OF 2023

Gafar Ansarmiya Shaikh

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Satej S. Jadhav – Advocate for the Applicant

Mr. N. D. Batule – APP for the State

Mr. Vilas P. Sawant – Advocate for the Respondent No. 2/Victim

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CORAM : NEERAJ P DHOTE, J.

DATED : 06TH OCTOBER, 2025

PER COURT : -

1. This is an Application for Suspension of the Substantive Sentence awarded by the learned Extra Joint District Judge & Additional Sessions Judge, Latur, *vide* the Judgment and Order dated 17.10.2023, passed in Special Case (POCSO) No. 28 of 2020, convicting the Applicant/Appellant for the offence punishable under Section 376(2)(n) of the Indian Penal Code read with Sections 4, 6 of the Protection of Children from Sexual Offences Act, and sentencing to suffer rigorous imprisonment for Twenty [20] years and to pay fine of Rs.1000/- (Rs.One thousand only), in-default to suffer simple imprisonment for six [6] months.

2. The case of the Prosecution, in brief, is that the Victim, who was minor, was sexually exploited by the Applicant/Appellant. Subsequently, the Victim was married. Three months post her marriage, she experienced pain in her stomach and, therefore, her mother took her for medical examination. It was revealed that, the Victim was pregnant. At that point of time, the Victim informed her mother that, the Applicant/Appellant had sexual intercourse with her. Due to love affair and the Applicant/Appellant promised her to marry and committed sexual intercourse for two to three times. The incident was reported to the Police and the Crime bearing No. 57 of 2020 came to be registered with M.I.D.C. Latur Police Station, for the offences punishable under Sections 376(2)(n), 506 of the IPC and Sections 4 and 6 of the POCSO Act. After the Charge-sheet, the Applicant/Appellant was tried and came to be convicted as above.

3. It is submitted by the learned Advocate for the Applicant/Appellant that, the evidence in respect of age of the Prosecutrix do not establish that, the Victim was minor at the time of the incident. The Victim was married. The husband of the Victim was examined as Defence Witness and his evidence show that the Victim was 18 years of age at the time of the marriage. The Applicant/Appellant has brought in the cross-examination of the Victim the possibility of false implication. The Applicant/Appellant was on bail during the trial and he has good case on merits and, therefore, the Application be allowed.

4. The Application is opposed by the learned APP and learned Advocate Mr. V. P. Sawant, who appeared on behalf of the Victim. They submit that, the age of the Victim has been established by examining the Headmaster of the School where the Victim had taken education. The evidence of the Victim in respect of rape by the Applicant/Appellant is clear and it is not expected that she should give the exact details. The medical evidence show that, the Victim was pregnant and this lends support to the testimony of the Victim. The learned Trial Court has rightly convicted the Applicant/Appellant and the Application be rejected.

5. With the assistance of both the sides, I have gone through the evidence on record. The Victim is examined as PW1. Her evidence shows that, she was married. Regarding the incident, she deposed that the Applicant/Appellant had forcible sexual intercourse with her by giving inducement of marriage and threatened her not to disclose the same to anybody. According to the Victim, the Applicant/Appellant took her out of the house for two to three times. If we see the evidence of the Victim, the act of forcible sexual intercourse had taken place once. The said evidence is not specific. True it is, that the exact date is not expected, however, except that, the Applicant/Appellant took her in a room of his friend and had forcible intercourse with her, there is nothing

so show that her testimony was concrete and can be accepted without corroboration. Though she deposed that, for two to three times, she went with the Applicant/Appellant out of the house, she nowhere deposed about the sexual intercourse by the Applicant/Appellant at that time. Considering the evidence of the Victim, it would require corroboration.

6. Though the evidence on record indicate that the Victim had become pregnant and samples were taken, admittedly, there is no DNA report to indicate as to who was the biological father of the foetus. So far as the age of the Victim is concerned, the evidence of the Victim's mother who is examined as PW2, shows that the Victim's date of birth is not recorded in the record of Municipal Corporation and according to her, she born in the year 2004. According to the Victim, she had taken education in Nutan Primary School, Sale Galli, Latur, and the Headmaster of the School examined by the Prosecution to prove the date of birth was from the School, namely, Matoshri Kesharbai Jaganath Kadtane Prathmik Shala, Latur. *Prima facie*, the Schools are not one and the same.

7. From the above discussion, *prima facie*, the evidence in support of the Charge cannot be said to be concrete. The Applicant was on bail during the trial. He is behind the bars for a period little short of

two (2) years. Though the R&P is received, the paper-book is not ready and, therefore, there is no likelihood that the Appeal would be heard in the near future. In this view of the matter, I am inclined to allow the Application and hence, the following order is passed: -

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant by the learned Extra Joint District Judge & Additional Sessions Judge, Latur, *vide* the Judgment and Order dated 17.10.2023 passed in Special Case (POCSO) No. 28 of 2020, 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.25,000/- [Rupees Twenty Five Thousand], with one or two sureties in the like amount.
- [iii] The Applicant shall cooperate in early disposal of the Appeal.
- [iv] Bail before the Trial Court.

[NEERAJ P. DHOTE]
JUDGE

SG Punde