



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO. 5070 OF 2024
IN APEAL/1092/2024

RAJENDRA ARUNRAO SALVE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Nitin V. Gaware Patil, Advocate for Applicant (through V.C.);

Ms. A. S. Deshmukh, APP for Respondent No.1-State.

Ms. Pooja Kishor Apache, Advocate for Respondent No.2.

...

CORAM : NEERAJ P DHOTE, J.

DATE : 7th NOVEMBER, 2025

PC.:-

1. This is an application for suspension of sentence passed by the learned Special Court of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), in Special POCSO Case No.165 of 2023 dated 25th September 2024, convicting and sentencing the Applicant/Appellant as follows:-

“(1) Accused Rajendra Arunrao Salve is hereby convicted as per provisions of Section 235(2) of the Code of Criminal Procedure, for the offence punishable under Section 376(2) (f)(n) of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for ten (10) years, and to pay fine of Rs. 5,000/- (Five Thousand); in default to suffer simple imprisonment for four months.

(2) Accused Rajendra Arunrao Salve is hereby further convicted as per section 235(2) of the Code of Criminal Procedure, for the offence punishable under Section 354A of the Indian Penal Code, and he is sentenced to suffer simple imprisonment for six months and to pay fine of Rs.500/- (Five Hundred) in default to suffer simple imprisonment for

one month.

- (3) Accused Rajendra Arunrao Salve is hereby further convicted as per section 235(2) of the Code of Criminal Procedure, for the offence under section 5(m) (1) punishable under section 6 of The Protection of Children from Sexual Offences Act, and he is sentenced to suffer rigorous imprisonment for twenty (20) years and to pay fine of Rs.10,000/- (Ten Thousand); in default to suffer simple imprisonment for six months.*
- (4) All the substantive sentences of imprisonment of accused shall run concurrently.*
- (5) As per the proviso laid down under section 376-D of Indian Penal Code, out of fine amount, if recover, an amount of Rs. 15,000/- shall be paid to the victim to meet the medical expenses and rehabilitation of the victim, after appeal period is over.*
- (6) The period of detention undergone by the accused during the investigation, inquiry or trial of this case, be set off against the sentence of imprisonment, as per Section 428 of the Code of Criminal Procedure.*
- (7) Copy of this judgment be provided to the accused free of cost.*
- (8) Copy of this judgment be sent to the District Magistrate, Ahmednagar, as per Section 365 of Code of Criminal Procedure.*
- (9) Judgment is dictated directly on computer and pronounced in open Court.”*

2. Heard learned Advocate for the Applicant/Appellant, Ms. A. S. Deshmukh, learned Advocate for Respondent No.1-State and Ms. Pooja Kishor Apache, learned Advocate for Respondent No.2-Victim.

3. The case of the prosecution in brief is that, the Victim was

studying in 4th Standard. She was sexually assaulted by the Applicant/Appellant, who was her class teacher. On 30th November 2015, the victim reported the incident to her aunt. Then the matter was reported to the police, Crime No.328 of 2015 came to be registered with Shrigonda Police Station, for the offences punishable under Sections 376(2)(f)(n), 354-A of Indian Penal Code and Section 5(m)(l), 6 of POCSO Act. The charge-sheet was filed. The Applicant/Appellant came to be tried and convicted by the impugned judgment and order.

4. It is submitted by learned Advocate for the Applicant/Appellant that as per the victim's testimony, the act of sexually assault was committed 3 to 4 times, however, there was no complaint of any sort by the victim. The prosecution has failed to prove the presence of the victim in the school on 30th November 2015, as the documents produced at Exhibit Nos. 36 and 38 are inconsistent with each other regarding her attendance on that date. Furthermore, the medical officer who examined the victim has not been examined by the prosecution. Although the victim has deposed that the incident occurred in the presence of two to three of her friends, none of them have been examined as witnesses. The prosecution has also failed to establish the age of the victim. He submits that the Applicant/Appellant has a good case on merits. The Applicant/Appellant was on bail during

the trial and has been in custody for the past two years. He further submits that even if the evidence on record is accepted for the sake of argument, the alleged offence would not travel beyond the offence punishable under Section 8, which prescribes a maximum sentence of five years. In support of his submissions, he has relied on the orders passed by this Court in Criminal Appeal Nos. 928 of 2014 and 768 of 2014. He submits that the present application be allowed.

5. It is submitted by the learned APP that, the victim has deposed regarding the incident, and the prosecution has also examined the school teacher, whose evidence shows that the victim was present in the school on the date of the incident, i.e., 30th November 2015. The age of the victim has been established on the basis of the school record. It is further submitted that the nature of the offence is serious and that the Applicant/Appellant was a teacher of the victim. Since the present application is for suspension of sentence, all these aspects can be considered at the time of final hearing. She, therefore, submits that the application be rejected.

6. With the assistance of learned Advocate for the Applicant/Appellant and the learned APP for Respondent-State assisted by learned Advocate for Respondent No.2, I have gone through the testimony of the witnesses. The prosecution has examined in all the

four (4) witnesses. The victim is examined as Respondent No.1. In her testimony, she deposed of the acts by the Applicant/Appellant committed on her. Though, in her testimony, she has not deposed the specific date of incident, she has deposed that the last such incident took place before Diwali vacation in the year 2015. Exhibit-36, which is the extract of the attendance register of 4th standard, show that the victim was present in the school on 30th November 2015 and Exhibit-38 which is also the extract of attendance of the same class show that from 28th November 2015 onwards, the attendance column is left blank, and it is not indicated whether the victim was present or absent. However, the substantive evidence of PW-3, who was a teacher in the same school where the victim was studying, categorically show that the victim was present in school on 30th November 2015. Her testimony further show that the Applicant/Appellant was also present in the school on the said day. Therefore, the substantive evidence on record indicate that both the victim and the Applicant/Appellant were present in the school on the date of the alleged incident. It is not disputed that the Applicant/Appellant was a teacher in the school where the victim was studying. Prima facie, there is nothing in the testimony of the victim to disbelieve her version. The evidence of the victim show the essential ingredients of the sections of the POCSO Act under which the conviction and sentence is recorded. The maximum sentence awarded

to Applicant/Appellant is 20 years. The facts of the cases cited by the Applicant/Appellant are different from the facts of the present case. In my considered view, no case for suspension of sentence is made out. Hence, the application is rejected.

7. For this application, fees of the learned Advocate Ms. Pooja Kishor Apache appointed to represent Respondent No.2-victim shall be paid by the High Court Legal Services Sub-committee, Aurangabad as per rules.

(NEERAJ P. DHOTE, J.)

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