



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

22 CRIMINAL APPLICATION NO. 4439 OF 2023
IN APEAL/925/2023

Sanjay Baban Ughade

VERSUS

The State Of Maharashtra And Another

...

Mr. Satej S. Jadhav, Advocate for Applicant

Mr. C. V. Bhadane, APP for Respondents/State

Mr. Prasad B. Kadam, (appointed Through Legal Aid For R. No. 2)

...

WITH

CRIMINAL APPEAL NO. 925 OF 2023

Sanjay Baban Ughade

VERSUS

The State Of Maharashtra And Another

...

CORAM : NEERAJ P DHOTE, J.

DATED : 15TH SEPTEMBER, 2025

PER COURT : -

1. This is an application for suspension of sentence imposed by the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.25 of 2022. The conviction and sentence recorded by the learned Trial Court reads as under :-

"1) Accused Sanjay Baban Ughade is hereby convicted for the offence punishable u/sec.363, 376(2) (j), 354-A, 354-B of IPC and u/sec.4(2) and 8 of POCSO Act vide section 235(2) Cr.PC.

2) For commission of offence punishable u/sec.363 IPC, the accused shall suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- (Rupees Three Thousands Only), in default to suffer S.I. for seven days.

- 3) *For commission of offence punishable u/sec.376(2) IPC, he shall suffer rigorous imprisonment for ten years and to pay a fine of Rs.10000/- (Rupees Ten Thousands Only), in default to suffer S.I. for two months.*
- 4) *For commission of offence punishable u/sec.354-A (2) IPC, he shall suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- (Rupees Three Thousands Only), in default to suffer S.I. for seven days.*
- 5) *For commission of offence punishable u/sec.354-B IPC, he shall suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- (Rupees Three Thousands Only), in default to suffer S.I. for seven days.*
- 6) *For commission of offence punishable u/sec.4(2) of the POCSO Act, he shall suffer rigorous imprisonment for twenty years and to pay a fine of Rs.20000/- (Rupees Twenty Thousands Only), in default to suffer S.I. for six months.*
- 7) *For commission of offence punishable u/sec.8 of the POCSO Act, he shall suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- (Rupees Three Thousands Only), in default to suffer S.I. for seven days.*
- 8) to 13).....”

2. It is the case of the prosecution in brief that, the victim who was 11 years residing with her mother and grandmother, was called by the Applicant/Appellant who was 21 years of age at the time of incident i.e. on 25 November 2021, in the night, over the telephone and the victim left her house and accompanied the Applicant/Appellant. The Applicant/Appellant took her to one hotel, had sexual intercourse with her and thereafter dropped her to the house of the victim's paternal aunt's home at Jalna. The relatives of the victim took her from the aunt's place and informed the same to the victim's mother. The incident was reported to the Osmanpura Police Station, Aurangabad and crime

came to be registered against the Applicant/Appellant for the offences punishable under Section 363, 376(2)(j), 354-A, 354-B of Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. It is submitted by the learned Advocate for the appellant that the prosecution had failed to establish their own case, therefore the presumption under the POCSO will not come into play. The evidence on record indicate that the possibility of tutoring the victim cannot be ruled out. The phone call details/CDR's of the victim's mother phone and the telephone of the Applicant/Appellant are not seized. The relatives of the victim, who fetched victim from her aunt's house are not examined. The medical evidence does not support the case of Prosecution. The victim's statement was recorded after one day and she merely signed on the same. The Applicant/Appellant is having good case on merit and therefore the application be allowed.

4. The application is opposed by the learned APP for the prosecution and learned Advocate for Respondent No.2-Victim. They submit that in such cases the evidence of the victim is material and conviction can be based on the same. The other evidence on record corroborate the case of the prosecution and the learned Trial Court has

rightly appreciated the evidence on record and held that the Applicant/Appellant has not seriously disputed the case of the prosecution. They submit that the application be rejected.

5. Perused the evidence on record. According to the victim she received a phone call in the night of 25th November 2021 from the Applicant/Appellant and accordingly, she accompanied the Applicant/Appellant, who took her to a hotel where he established physical relation with her and thereafter in the morning he dropped her near the house of her paternal aunt. There is no serious dispute that the victim was a child at the relevant time. Though the evidence on record go to show that on very same day of the incident i.e. 25.11.2021, the victim was examined by the medical officer, there were no signs of use of force, however, the final opinion was reserved. It has come in the evidence of medical officer that, she did not find any fresh sign of sexual intercourse. Though the evidence of victim shows that she was sleeping with her mother and grand mother, the phone call was received on her mother's phone and she had conversed for 10 to 20 minutes. Her evidence also show that, the Applicant/Appellant himself informed her family members and told the place where the victim was taken. The evidence of the victim's mother shows that, the Applicant/Appellant informed her on phone that during the night time

her daughter had come to him and he left her at the house of her paternal aunt at Jalna. Immediately she changes this version as can be seen from the evidence that, the Applicant/ Appellant informed her on phone that, he had taken her daughter and he left her at her paternal aunt's house. Undisputedly, the evidence of the investigating officer show that he did not collect the mobile handsets of the victim and her family members and did not collect the CDR reports. The evidence of victim's mother would show that, on 25.11.2021 her relatives along with her daughter came in the evening and they straight away went to the Osmanpura police station and thereafter she went to the police station. Though it has come in the evidence of the victim's mother that on 25.11.2021 the police made enquiry with her daughter, the evidence of investigating officer show that he did not record statement of victim on 25.11.2021. On 26.11.2021 the police asked victim's mother to bring her daughter to the police station for putting signatures. Thereafter the police read over the papers and took her signatures. The victim's evidence show that on 26.11.2025 she was taken by mother to the police station to put her signatures on the typed statement which was read over to her and then she put her signature and at that time she came to know what type of case was lodged against the Applicant/Appellant. The aunt of the victim is not examined. The relatives who fetched the victim from her paternal aunts house are also

not examined. *Prima facie* the evidence of the victim and her mother is shaky. The Applicant/Appellant has arguable case on merits. The Applicant/Appellant is behind the bars for a period more than 3 and half years [completing four years in November 2025]. The Appeal will take some time to come up for hearing. Thus, I am inclined to pass the following order :-

ORDER

[i] Application is allowed.

[ii] The substantive sentence imposed upon the Applicant/Appellant by the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.25 of 2022, is hereby suspended till the final disposal of Criminal Appeal.

[iii] The applicants be released on P.R. of Rs.15,000/- [Rupees Fifteen Thousand], with one surety in the like amount. Applicant/Appellant shall co-operate in early hearing of the appeal.

[iv] Bail before the Trial Court.

[v] Application stands disposed off.

[NEERAJ P. DHOTE]
JUDGE