



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.305 OF 2024

IN

CRIMINAL APPEAL NO.158 OF 2024

(Sagar s/o Banduji Fusate Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. F.N. Haidari, Advocate for the appellant.
Mr. C.A. Lokhande, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 28, 2025

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant was prosecuted of the offence punishable under Sections 376AB of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. As per the prosecution case, the victim who was 3 years and 7 months subjected for the sexual assault by the present applicant by inserting his finger in her private part. On the basis of the said report, police have registered the crime against the present applicant. During trial, the victim as well as the mother of the victim both have not supported the prosecution case.

3. Learned Counsel for the applicant submitted that the entire case is based on the evidence of the victim

who has not supported and her mother has also not supported. There is no medical evidence. Thus, the appellant has every chance of success in the present appeal; however, the appeal would take its own time for its final disposal, and therefore, the execution of the sentence be suspended.

4. Learned Additional Public Prosecutor strongly opposed the application and submitted that though victim and her mother has not supported the prosecution case, but the evidence of the Doctor shows that the sexual assault cannot be ruled out. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties and perused the impugned judgement from which it reveals that the appellant is convicted of the offence punishable under Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for two years and fine amount of Rs.6000/- in default sentenced to suffer simple imprisonment for two months. On perusal of the impugned judgment, the learned Special Court placed reliance on the evidence of the Medical Officer and the statement of the victim under Section 164 of Cr.P.C.

6. On the basis of the same, it was held that there was a penetrative sexual assault and the Medical Officer opined that the possibility of sexual assault cannot

be ruled out; however, the evidence of the victim and her mother shows that they have not supported the prosecution case.

7. Learned Counsel for the applicant pointed out from the impugned judgment as well as from the evidence that the appellant/accused has every chance of success in the present appeal; however, the appeal would take its own time for its final disposal. The appellant/accused has already undergone 3 years and 11 months. Considering the same, the application for suspension of sentence be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 15/02/2024 in Special POCSO Case No.56/2021 passed by the Additional Sessions Judge and Special (POCSO) Judge, Wardha is hereby suspended till final disposal of the appeal.

(iii) The appellant - Sagar s/o Banduji Fusate be released on bail on executing PR. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety, in the like amount.

(iv) The appellant shall attend the Special Court, Wardha on 5th day of every month till

disposal of the appeal and the Special Court shall record the presence of the appellant.

8. The application stands disposed of.

CRIMINAL APPEAL NO.158 OF 2024

Heard.

2. Appeal is already admitted and R. & P is already received.

3. Place the appeal before the Court after preparation of the paper book for final disposal.

(URMILA JOSHI-PHALKE, J.)

**Divya*