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912criapln4703.25

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

**912 CRIMINAL APPLICATION NO. 4703 OF 2025
IN APPEAL/949/2025**

GAJANAN MAROTI GHOGARE

....Applicant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

Mr. A. L. Kande, Advocate for the applicant

Mr. U. S. Bhosale, APP for the respondents/State

CORAM : RAJNISH R. VYAS, J.

DATE : 11th MARCH, 2026

PER COURT :

1. This is an application for grant of bail and suspension of sentence preferred by the original accused No. 2 Gajanan since he was convicted in Special Case NO. 223/2024 on 24-11-2025 by the Special Court/Additional Sessions Judge, Parbhani for commission of offences punishable under Section 17 of the Protection of Children From Sexual Offences Act, 2012. Maximum punishment imposed on the applicant is of 20 years with fine of Rs.2000/- and default sentence was also imposed.

2. The original accused No. 1 was convicted for the commission of offences punishable under Sections 4, 6 & 12 of the

Act of 2012.

3. Heard the counsel for the applicant. He submitted that all through out the trial the applicant was on bail and did not misuse the liberty and after pronouncement of judgment of conviction he has surrendered to the custody of the court. According to him, if the ingredients of Section 17 of the Act of 2012 are considered, it would crystal clear that the applicant should not have been convicted for the aforesaid offences.

4. The learned APP has contended that the crime committed was against the minor girl who at the time of commission of offence was 13 years old. She, therefore, submitted that considering the length of sentence and the case against him, he is not entitled for relief.

5. The learned appointed counsel has also supported the stand taken by the learned APP and has contended that in fact, if the testimony of prosecutrix is taken into consideration, it would reveal that same is cogent and reliable and role of the present applicant is specifically spelled out.

6. With the help of respective counsels for the parties, I have gone through the record of the case. Since this is an application for grant of bail and suspension of sentence, it will have to be seen

whether the accused has arguable points in the appeal or not. In order to bring home the charge, the prosecution has examined in all six witnesses. Victim of the crime was examined as PW-5. In the examination-in-chief she has categorically stated that under the pretext performing the marriage, the original accused No. 1 had performed the sexual intercourse in the house, in which the present applicant was residing. If the testimony of PW-5 is perused, it would reveal that she has stated in her examination-in-chief that she had developed the friendship with the original accused No. 1 and became pregnant due to sexual intercourse. She deposed that on 15-05-2024 for the first time she had physical relationship with the original accused No. 1 in the house of the present applicant. The present applicant was in the house when the physical intercourse had taken place. She has deposed that the applicant used to latch the door from the outside and used to keep watch on the persons who might visit the house. She submitted that on 10-12 occasions there were physical relationship in the house of the present applicant and timing was in between 02.00 to 03.00 O'clock noon.

7. At this stage, it is necessary to mention here that it is not the case of the prosecution that the applicant was aware of the fact that the original accused No.1 had promised the victim that they would marry and under that pretext had performed sexual

intercourse. Thus, question is whether Section 16 of the Act of 2012 can be interpreted in favour of the prosecution. It is further necessary to mention here that except this, nothing has been brought on record by the prosecution to show the involvement of the present applicant. The present applicant has not participated in the act which was committed by the accused No.1. The applicant has no criminal antecedent and did not misuse the liberty.

8. Considering the aforesaid fact, so also, the aspect that the applicant was on bail all through out the trial and did not misuse the liberty, I am inclined to pass the following order.

ORDER

- a] The application is allowed.
- b] The sentence imposed upon the present applicant in Special Case No. 223/2024 on 24-11-2025 by the Special Court/Additional Sessions Judge, Parbhani for commission of offences punishable under Section 17 of the Protection of Children From Sexual Offences Act, 2012 is hereby suspended till the decision on the appeal.
- c] The applicant shall be released on the same terms and conditions as were imposed by the trial court.

(5)

912criapln4703.25

d] The victim/prosecution will be at liberty to prefer an application for cancellation of bail, if the applicant/appellant makes an attempt to influence/threat the witnesses.

e] The learned appointed counsel has argued the case of the victim at length. His fees be quantified at Rs.8,000/-.

[RAJNISH R. VYAS, J.]

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