

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3530 OF 2025
IN
CRIMINAL APPEAL NO.673 OF 2017

Vinod Shivaji Bobade	]	Applicant
versus		
The State of Maharashtra	]	Respondent

.....
Mr. Sachin Thombare (through V.C), for Applicant.

Ms. S.N. Deshmukh, A.P.P, for Respondent-State.

.....
CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.

DATE : 8th JANUARY, 2026.

ORAL ORDER: [PER R.G. AVACHAT, J.]:

1. Heard learned Counsel for the applicant and the learned A.P.P, for respondent – State.

2. This is an application under section 389 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) for suspension of substantive sentence imposed upon the applicant by the learned Additional Sessions Judge, Satara in Special (Child) Sessions Case No.74 of 2014. This is the

first application. The applicant has been convicted for the offence of rape on his step daughter. The operative order of conviction reads thus;

“1] Accused Vinod Shivaji Bobade is hereby convicted vide Section 235 (2) of the Code of Criminal Procedure, for the offence punishable under Section 376(2) (i) of the Indian Penal Code and sentenced to suffer imprisonment for life, which shall mean imprisonment for the remainder of his natural life and to pay a fine of Rs.25,000/- (Rupees twenty five thousand only) in default to suffer rigorous imprisonment for one year.

2] The accused is also convicted for the offence vide Section 235 (2) of the Code of Criminal Procedure, for the offence punishable under Section 5(n) r/w Section 6 of the Protection of Children from Sexual Offences Act and sentenced to suffer imprisonment for life which shall mean imprisonment for the remainder of his natural life and to pay a fine of Rs.25,000/-(Rupees twenty five thousand only) in default to suffer rigorous imprisonment for one year.

3] Accused is also convicted for the offence vide Section 235 (2) of the Code of Criminal Procedure, for the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- (Rupees twenty five thousand only) in default to suffer rigorous imprisonment for one year.

4] The accused is also, convicted for the offence vide Section 235 (2) of the Code of Criminal Procedure, for the offence punishable under Section 3 r/w Section 4 of the Protection of Children from Sexual Offences Act. However no separate sentence is passed in view of sentence passed under Section 376(2) (i) of the Indian Penal Code and Section 5(n) r/w Section 6 of the Protection of Children from Sexual Offences Act.

5] All the sentences to run concurrently.

6] The fine amount of Rs.75,000/- (Rupees seventy five thousand only), if deposited by the accused be paid as 20 compensation to the victim.

7] A copy of this order be also sent to the District Legal Authority, Satara, recommending appropriate compensation to the victim.

8] The muddemal property the bed-sheet and the clothes at Sr. Nos.1 to 6 being worthless be destroyed after expiry of appeal period”.

3. Learned A.P.P has strong reservation to allow the application. According to her, it is an offence against society. The victim was around twelve years of age. The victim was as good as in the custody of the applicant. According to her, even the medical evidence may be said to have been supporting the applicant, Sole testimony of the victim of offence of rape could be relied upon. She submits that there is plethora of authorities including the judgments of this Court as well, wherein, in such cases, suspension of substantive sentence is not permitted. Learned A.P.P vehemently prays for imposing stringent conditions, if the Court is inclined to allow the application.

4. Learned Counsel for the applicant would submit that the victim has left the village alongwith his mother.

5. The applicant is in jail for little over eleven years and two months. The applicant has not at all been granted parole or furlough during the period of incarceration. It will take time to hear the appeal, finally.

Medical examination report of the victim records thus;

- “f) Hymen: Injury present/absent: absent Edges: --- Bleeding -
Oedema: Position of Tears: o’ clock
- g) E/o Perineal Tear if any: No perineal tear
- h) Urethra: Normal
- i) PS examination Not done as hymen not ruptured
- j) Anus: Normal
- k) Oral Cavity: Normal
- l) Any other findings: Nil

(VII) Specific Examinations:- (wherever facilities exists and if indicated)

- a) Toluidine blue dye test : Results - Not done
- b) Wet amount slide test Results : Results - Not done
- c) UV light exam of clothes and skin : Results - Not done
- d) Anoscopic/colposcopic exam: : Results - Not done

(VIII) Sample collection for Hospital/Clinical Laboratory: Sample can be taken according to requirement of a case advice investigations/test according to case presentations & signs:

Sr. No.	Sample Name	Test for	Preservative/ Packing	Collected ? Yes/No
1	Vaginal Swab (Sterile cotton)	Microscopy & Culture	Plain Sterile Bulb	Yes
2	Urethral Swab	Microscopy & Culture	Plain Sterile Bulb	No
3	Swab (Sterile	Microscopy &	Plain Sterile	Yes

	Cotton) from discharge	Culture	Bulb	
4.	Blood	Serology (for Syphilis, HIV & Hepatitis B)	Plain Sterile Bulb	Yes
5.	Urine (midstream)	Microscopy & Culture	Plain Sterile Bulb	No

Pregnancy Test: Yes/No/Not indicated: If positive advise USG ---Not indicated

(IX) The samples must be collected as per time elapsed between assault and examination, history and physical findings. This will avoid unnecessary sample collection. The list of samples to be preserved is annexed herewith in triplicate, which is the part of requisition to FSL for relevant examination. Here it must be remembered that specific mention in words as to which samples are collected and which are not collected is very necessary.

Note (if any).....

(X) **Provisional opinion:** Vitim is examined after about 2 days of the incidence.

7) Evidence of injuries to the genitals/anus:
No injuries to the genitals/anus.

8) Evidence related to non penetrative assault:
No evidence found related to non penetrative assault.

9) Evidence of injuries suggestive of application of force/restraint:
No e/o injuries s/o application of force

10) Opinion as to age of injuries and nature of injuries:
No injuries detected.

11) Results of wet mount slide examination for evidence of spermatozoa:
Not done

- 12) Evidence as to consumption/being under the influence of drugs and/or alcohol
No evidence s/o under influence

On the basis of above mentioned observations my/our OVERALL OPINION is that (Tick which is applicable and Strike out which is not applicable):

- e) Overall findings are consistent with sexual intercourse/assault, however, final opinion is kept pending till receipt of FSL reports OR
- f) Evidence of sexual intercourse/assault cannot be ruled out. Hence, final opinion is kept pending till receipt of FSL reports. OR
- g) Opinion reserved pending till receipt of FSL and/or (if any) investigations AND/OR
- h) Considering the history & examination findings though there is no evidence of deep penetration but superficial penetration cannot be ruled out". So opinion reserved till FSL reports".

6. Considering the medical examination report coupled with long incarceration of the applicant, we are inclined to allow the application in terms of the following order;

: ORDER :

(a) The substantive sentence imposed by learned Additional Sessions Judge, vide Judgment and Order dated 11th May, 2017 passed in Special (Child) Sessions Case No.74 of 2014 on applicant Vinod Shivaji Bobade is suspended during the pendency of the present appeal on following condition.

(b) Applicant - Vinod Shivaji Bobade be released on bail on his furnishing P.R bond in the sum of Rs.15,000/- [Rs. Fifteen Thousand only] with one surety in the like amount.

(c) Bail before the Sessions Court, Satara.

7. Interim Application stands disposed of accordingly.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]