



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

CRIMINAL APPLICATION (APPA) NO. 439/2025

IN

CRIMINAL APPEAL NO. 246/2025

Bhagwan Kisan Khodve

Vs.

The State of Maharashtra and Ors.

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders
.....

Court's or Judge's order

Mr. A. S. Mardikar a/b. Mr. R. S. Kurekar, Advocate for Applicant.
Mr. Bhagwan Lonare, A.P.P. for Non-applicant/State.
Mr. P. D. Saliokar, Advocate (Appointed) for Non-applicant No.2.

CORAM : NEERAJ P. DHOTE, J.

DATED : 09.03.2026

1. Heard the learned Advocate the Applicant, the learned A.P.P. for the State and the learned Advocate for the Non-applicant No.2 – Victim. With their assistance, perused the papers on record.

2. This is an application for suspension of sentence imposed by the learned Special Judge, Mehkar, District Buldhana in Special (POCSO) Case No.144/2019 convicting and sentencing the Applicant as follows :

“01) Accused Bhagwan Kisan Khodve is hereby convicted for the offences punishable U/s. 376(i), 452, 506 of I.P.C. and for the offences punishable U/s.4, 8 of POCSO Act vide section 258 (2) of Bharatiya Nagarik Suraksha Sanhita, 2023.

02) Accused Bhagwan Kisan Khodve is sentenced to suffer rigorous imprisonment for ten years and fine of one thousand rupees, for the offence punishable U/s.376(i) of I.P.C. r/w. S.42 of POCSO Act. In default of payment of fine he shall suffer simple imprisonment for one month.

03) Accused Bhagwan Kisan Khodve is sentenced to suffer rigorous imprisonment for one years and fine of five hundred rupees, for the offence punishable U/s.452 of I.P.C. In default of payment of fine he shall suffer simple imprisonment for fifteen days.

04) Accused Bhagwan Kisan Khodve is sentenced to suffer rigorous imprisonment for one year and fine of five hundred rupees, for the offence punishable U/s. 506(II) of I.P.C. In default of payment of fine he shall suffer simple imprisonment for fifteen days.

05) Accused Bhagwan Kisan Khodve is sentenced to suffer rigorous imprisonment for three years and fine of five hundred rupees, for the offence punishable U/s. 8 of POCSO Act. In default of payment of fine he shall suffer simple imprisonment for fifteen days.

06) All the substantive sentences shall run concurrently.

07) Accused is in jail from 24-01-2017 to 25-04-2017, he is entitled for set-off by virtue of S.468 of Bharatiya Nagarik Suraksha Sanhita, 2023.

08) Accused to surrender his bail bonds.”

3. The case of the prosecution is that, the Victim, who was 12 years of age on 20.01.2017, was raped by the Applicant when she was alone at her residence. The Applicant came to her house and asked for water. Thereafter, he raped her forcibly. The testimony of the Victim shows that, she had resisted the act of rape and scratched by nails to the Applicant. The medical evidence nowhere shows any injury on the person of the Victim. The medical evidence shows that there was no injury to the hymen and the perineum was not torn. It has come in the cross-examination of the Medical Officer, who has examined as PW-6 that, she did not find any signs of sexual assault upon the Victim. The opinion of the Medical Officer was provisional and no final opinion was given. The incident was dated 20.01.2017 and the report was lodged on 23.01.2017 i.e. after a delay of three (3) days. The evidence of Medical Officer (PW-7), who has examined the Applicant shows that, no marks or signs of scuffle on the person of the Applicant were found. There are omissions in the testimony of the Victim, which *prima facie* appears to be material. The Applicant has arguable case on merits. The Applicant was on bail during trial. The Appeal is not likely to be heard in the

near future. In this view of the matter, I proceed to pass the following order :

- i] The Application is allowed.
- ii] The sentence imposed by the learned Special Judge, Mehkar, District Buldhana in Special (POCSO) Case No.144/2019 on the Applicant is Suspended during pendency of the present Appeal.
- iii] Applicant be released on bail on his executing PR. bond of Rs.25,000/- with one solvent surety in the like amount.
- iv] The Applicant shall cooperate in early hearing of the Appeal.
- v] The application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)