



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

CRIMINAL APPLICATION (APPA) NO.449/2025

IN

CRIMINAL APPEAL NO.251/2025

(Chinna @ Kishanlal S/o Ramlal Nishad Vs. State of Maharashtra, through its Police Station Officer, Police Station Ballarshah, Tah. Ballarpur, District Chandrapur and another)

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

Court's or Judge's orders

Mr. N.T. Gwalwansh, Advocate h/f. Ms. S.B. Khobragade, Advocate for the Applicant/Appellant.

Mr. Bhagwan M. Lonare, A.P.P for the Respondent No.1/State.

Mr. Aakash Sorde, Advocate for the Respondent No.2/Victim.

CORAM: NEERAJ P. DHOTE, J.

DATED: 24.2.2026.

This is an Application for suspension of sentence imposed by the learned Additional Sessions Judge, Chandrapur in Special (POCSO) Case No.46/2020 convicting the Applicant/Appellant for the offence punishable under Section 376(2)(n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and sentencing him to suffer rigorous imprisonment for 20 years and fine of Rs.5,000/-, in default to pay fine, to suffer rigorous imprisonment for 12 months.

2. Heard the learned Advocate for the Applicant/Appellant, the learned A.P.P for the State and the learned Advocate for the Respondent No.1/Victim. With their assistance perused the evidence on record.

3. The prosecution's case is that, on 17.12.2018 the Victim lodged the report with Ballarshah Police Station that, the Applicant/Appellant proposed her. The Victim consented for the same.

The Applicant/Appellant used to frequently visit the house of the Victim. They both had sexual intercourse. When the family members of the Victim learnt about the relations, the report was lodged by the Victim against the Applicant/Appellant. After filing of the Charge-sheet, the Applicant/Appellant was tried and convicted by the impugned judgment and order.

4. The Victim was examined as P.W.1. Her evidence shows that, she consented for everything with the Appellant. They both had consensual relations. They wanted to marry. The Applicant/Appellant has disputed that, the Victim was the 'child' as defined under Section 2(d) of the POCSO Act i.e. below 18 years of age. To prove the Victim's date of birth and age, the prosecution has examined Headmaster of the school where the Victim was studying, as P.W.9. His evidence shows that, on the basis of the affidavit by the Victim's father, the date of birth was entered in the school record as 02.06.2004. The evidence of this witness shows that, while admitting the Victim to the school no document was submitted by her parents. It has further come on record that, the Victim's parents were not literate and there is possibility that, the illiterate person may give the incorrect date of birth. From this evidence it is clear that, only on the basis of the affidavit by the Victim's father the said date of birth was entered in the school record. Another evidence in respect of the age is that of P.W.10 Dr. Shyam R. Patil who was the Radiologist at the General Hospital, Chandrapur. According to this witness, the age of this witness was between 16 and 17 years. As per the settled position of law, two years on the either side can be considered when the age is

based on the Radiological Report. Therefore, the possibility that, the Victim was above 18 years of age cannot be ruled out.

5. The above observations show that, the Applicant/Appellant has arguable case on merits and the possibility of success in the matter cannot be ruled out. The Victim has filed her reply stating that, now she has married and moved ahead in life and does not wish to pursue any further in the matter. The Applicant/Appellant is behind bars for a period of 6 years. The Appeal is of 2025 and there is no possibility that it would be heard in near future.

6. In view of the above, following order is passed.

- i) The application is allowed.
- ii) The sentence imposed by the learned Additional Sessions Judge, Chandrapur in Special (POCSO) Case No.46/2020 convicting the Applicant/Appellant for the offence punishable under Section 376(2)(n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") is suspended on executing P.R. Bond of Rs.25,000/- with one surety in the like amount.
- iii) The Appellant shall co-operate in the early disposal of the Appeal.
- iv) The Application is disposed of in the above terms.

(NEERAJ P DHOTE, J.)