

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2377 OF 2022
IN APEAL/540/2022

KAMESH S/O JAGAN MATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. C. C. Deshpande, Advocate for applicant.
Mr. S. J. Salgare, APP for respondent No.1 – State.
Mr. R. P. Patwardhan, Advocate for respondent No.2.
...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 30th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed for suspension of substantive sentence imposed on the applicant – original accused. The learned Special Judge, under the POCSO Act, Aurangabad in Special Case No.342 of 2021, by order dated 22.06.2022 has convicted and sentenced the applicant thus :-

“1. Accused – Kamesh Jagan Mate is hereby convicted of the offence punishable under Section 506 of the Indian Penal Code (for short “IPC) under Sections 4, 5(I) read with Section 6, 5(n) read with Section 6, 8, 9(I) read with Section 10 and 9(n) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short

"POCSO Act") and 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 as per Section 235(2) of Code of Criminal Procedure (for short "Cr.P.C.").

2. Accused is convicted of the offences punishable under Section 506 of IPC as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for two years only.

3. Accused is convicted of the offence punishable under Section 4 of the POCSO Act as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1000/-.

4. Accused is convicted of the offence punishable under Section 5(I) read with Section 6 of the POCSO Act as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1000/-.

5. Accused is convicted of the offence punishable under Section 5(n) read with Section 6 of the POCSO Act as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1000/-.

6. Accused is convicted of the offence punishable under Section 8 of the POCSO Act as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/- in default to further undergo rigorous imprisonment for one month.

7. Accused is convicted of the offence punishable under Section 9(l) read with Section 10 of the POCSO Act as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.500/- in default to further undergo rigorous imprisonment for one month.

8. Accused is convicted of the offence punishable under Section 9(n) of the POCSO Act as per Section 235 (2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.500/- in default to further undergo rigorous imprisonment for one month.

9. Accused is convicted of the offence punishable under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as per Section 235(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.500/- in default to further undergo rigorous imprisonment for one month.”

2. Heard learned Advocate Mr. Chaitanya C. Deshpande for the applicant, learned APP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Mr. R. P. Patwardhan for respondent No.2.

3. The applicant has been charged of committing rape on his stepdaughter. The victim was minor at the time of alleged incident as per the prosecution story. If we consider the testimony of the victim, she has stated that her father was the first husband of her

mother and after the divorce between her mother and first father, her mother got married to accused. Accused, victim and mother were residing in one house. In her examination-in-chief, the victim has stated that when on one day her mother had gone outside, the accused had committed rape on her and also threatened that if she discloses the said fact to her mother as well as brother, then they would be driven out of the house. Therefore, she kept quiet. Thereafter, the said act was repeated by the accused after some days, but after the second occasion, the victim had told everything to the mother and then the report has been lodged.

4. Interesting pointed to be noted is that it appears that in the cross-examination, the victim turned hostile. She has even changed her birth date and was tried to be shown that she was major when the alleged incident had taken place. Rather the incident was falsely reported as the accused was addicted to liquor and used to harass the mother of the victim under the influence of liquor. It was then tried to be suggested that on the suggestion of the police, such offence has been registered. The mother has also been examined, however, she turned hostile. The learned Special Judge has appreciated the evidence, which was then corroborated with the statement of the victim under Section 164 of Cr.P.C., which was on oath before the learned Magistrate and also the other evidence, especially the medical evidence. Interesting point to be noted is

that the medical certificate of the victim has been admitted by the accused, which in fact includes the history that was narrated by the victim to the medical officer. In that history, it was specifically told by the girl to the medical officer that there was sexual assault by her stepfather since two years whenever her mother used to go outside. Taking into consideration the other evidence against the applicant, the conviction has been awarded by the learned Special Judge. It appears that the applicant – accused was never released on bail during trial.

5. The learned Advocate appearing for the applicant submits that respondent No.2 is having no objection to suspend the sentence, however, we cannot go with the wish of the lady when the record shows evidence and that has been appreciated. This cannot be taken as a fit case to suspend the sentence, taking into consideration the fact that a heinous crime appears to have been committed by the applicant being the stepfather of the victim. The application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm