

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No. 34 of 2015
IN
Criminal Appeal No. 19 of 2015
[Vishal Somwanshi Thakur (in jail) Vs. State of Mah.]

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

Court's or Judge's orders

Mr. A.R. Wagh, Adv., for the Applicant-appellant.
Mr. R.S. Nayak, APP for respondent.

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CORAM : V.M. DESHPANDE, J.

DATE : 31st August, 2015.

01. This is an application under Section 389 of Criminal Procedure Code for suspension of substantive jail sentence and for grant of bail.

02. Heard Shri A.R. Wagh, learned counsel for the applicant and Shri Rajesh S. Nayak, learned APP for the respondent-State.

03. This Court has already admitted the appeal on 27th February, 2015. While admitting the appeal, record and proceedings were called. Record and proceedings are received.

04. Present applicant was charged for the offences

under Sections 363, 366 and 376 of Indian Penal Code, read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.

05. The learned Judge of the Court below, vide Judgment and Order dated 24th November, 2014 passed in Special Child Case No. 17 of 2013, recorded a finding that the prosecution was successful in bringing home the guilt of the applicant-accused. The applicant was convicted for the said charges and was directed to suffer Rigorous Imprisonment for three years, five years and seven years respectively for such charges. The learned Judge of the court below directed that all the sentences of imprisonment shall run concurrently along with the substantive jail sentence. The total fine amount imposed upon the applicant is Rs. 2500/-.

06. The Judgment itself shows that the present applicant is in jail since 29th August, 2013.

07. Entire case of the prosecution revolves around the testimony of the prosecutrix. In so far as the offence punishable under Section 376, Indian Penal Code, is concerned, according to the prosecutrix, after eloping with the present applicant, the prosecutrix and applicant reached the house of one of the relatives of the applicant in the night. In the said house of the relative of the applicant, the prosecutrix was physically ravished against her will.

08. The prosecutrix is cross-examined in order to test the veracity of the statement appearing in her chief-examination. From the cross-examination, it is crystal clear that the house in which the prosecutrix along with the applicant stayed for a night, whereat, according to her, she was allegedly sexually assaulted, consisted of one room with lavatory facility. According to the testimony of the prosecutrix herself, at the relevant time in the night, apart from the prosecutrix and the applicant, in that room, there were five family members of the relatives of the present applicant.

09. In view of such evidence available on record, prima facie, it appears to be really doubtful as to whether the applicant has committed rape on the prosecutrix as claimed by her. Further, the applicant has already completed two years of his jail term. This Court is taking much older appeals, and in the near future, there is a little possibility of this appeal being taken up for final hearing. Looking to the aforesaid nature of the evidence as appearing in the testimony of the prosecutrix, in my view, the applicant has made out a case for suspension of substantive jail sentence. That leads me to pass the following order:-

ORDER

[a] Criminal Application [APPA] No. 34 of 2015 is allowed.

- [b]** The substantive jail sentence imposed upon the applicant by the learned Special Judge, Chandrapur, vide Judgment and Order dated 24th November, 2014 in Special (Child) case No. 17 of 2013 shall stand suspended.
- [c]** The applicant shall be released on bail on he executing a Personal Bond in the sum of Rs. 25,000-00 [rupees twenty-five thousand only] with one solvent surety in the like amount to the satisfaction of the learned Trial Court.
- [d]** The Applicant shall remain present before this Court at the time of final hearing of the appeal.
- [e]** Application is allowed and disposed of.

Judge