

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

Criminal Application [BA] No.159 of 2015

(Shirish Shaligram Sadafale

vs.

The State of Maharashtra, through P.S.O. Chandrapur [City], Chandrapur)

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

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 9, 2015.

Heard Mr. Y.B. Mandpe, the learned Counsel for the applicant-appellant and Mr. P.V. Bhoyar, the learned A.P.P. for the non-applicant/State.

The learned Counsel for the applicant, by inviting my attention to the order passed by this Court dated 05/03/2015, whereby the appeal was admitted, submits that the prosecution has utterly failed to establish the identity of the applicant. He by inviting my attention to the observations of the learned Sessions Judge submits that the learned Sessions Judge in clear terms observed that it was a dark as per the story of the prosecution, when the alleged incident took place and the victim allegedly states that she identified the applicant-appellant on the basis of his voice. There is no other material for identification of the applicant except this very weak piece of evidence. He submits that though it was

the case of the prosecution that the neighbourer gathered on the spot on hearing hue and cry, but the prosecution, for the reasons best known to it, failed to examine any of such neighbourer. He then submits that PW-2, who is the uncle of the victim, though states that, he ran behind the accused, he was unable to establish any identity of the accused and as per the observations of the learned Sessions Judge at that point of time even PW-2, who was not aware of the appellant-accused merely on a spontaneous reaction ran behind the person. Thus, it is the submission of the learned Counsel that on the basis of such weak material, the applicant has been awarded sentence of three years and six months along with fine for the offences under Section 7 and 8 of the Protection of Children from Sexual Offences Act, 2012. The learned Counsel submits that fine amount is already paid by the applicant and the applicant having every hope of success in the appeal on the grounds raised by him. The learned Counsel then submits that as the appeal may take some considerable period for it's decision, it may not be justified keeping the applicant behind the bars for an indefinite period. The learned Counsel for the applicant submits that the applicant was on bail during the pendency of the trial and he has not misused the liberty granted to him. The learned Counsel, therefore, prays for

suspension of sentence and grant of bail to the applicant.

Mr. Bhoyar, the learned A.P.P. opposes the application.

On perusal of the judgment and order passed by the learned Sessions Judge as well as the record, in my opinion, the learned Counsel for the applicant has made out a case for suspension of sentence and grant of bail.

In the result, the application is allowed.

The applicant be released on bail on his furnishing fresh bond in the same amount and on the same terms and conditions as they were during pendency of the trial. The substantive sentence imposed on the applicant by the trial Court shall remain suspended during pendency of the appeal.

The application stands disposed of as such.

Hamdast granted.

JUDGE

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