

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 743/2004

(Sunil Ashokrao Tiwarkhede vs. State of Maharashtra)

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

Court's or Judge's order

.....
Mr. Ashwin Wasnik, Advocate for appellant
Ms. N P Mehta, APP for respondent -State

CORAM: A.B.CHAUDHARI, J.

DATED : 4th February, 2016.

Heard.

Mr. Ashwin Wasnik, learned counsel for the appellant points out that the judgment in question was rendered by 10th Ad-hoc Assistant Sessions Judge, Nagpur, on 22.7.2004, under which the appellant was convicted for offence punishable under Section 376 of the Indian Penal Code and was sentenced to suffer R.I. for seven years and to pay a fine of Rs. 5000/- in default, to suffer R.I. for one year.

Learned counsel for the appellant submits that u/s. 374 sub-section (3), the instant Appeal would lie before the Sessions Judge, Nagpur, but was wrongly filed in this Court, in the year 2004. This Court granted bail to the appellant by order dated 15th March 2005 and since then he is at large. This Appeal has been called out for hearing and the appellant was brought on non-bailable warrant, but since the learned counsel for the appellant submitted that he would go ahead with the hearing the Appeal, the appellant was not taken into custody and the hearing has started today at 3.00

p.m. It is, however, seen that the Appeal would lie before the Sessions Judge. It is seen from the impugned judgment that the appellant was in jail from 30th March 2002 till 18.9.2002 and 27.4.2004 till 29.5.2004, i.e. hardly for a period of four- and-a- half months. *Prima facie*, looking to the evidence of the prosecutrix, I think the appellant deserves to be taken into custody even before sending him for hearing of the Appeal before the Sessions Judge, Nagpur. This observation is made without prejudice to the rights of the parties to this Appeal. In that view of the matter I make the following order :

ORDER

- a) Criminal Appeal No. 743/2004 is sent back to the Sessions Judge, Nagpur who shall, on priority basis, allot the same to the appellate Sessions Judge at Nagpur.
- b) The entire record including this paperbook shall be transmitted to the Sessions Judge, Nagpur.
- c) The appellant shall be produced before the Sessions Judge, Nagpur on 12.2.2016 and shall be given an opportunity to engage an Advocate and thereafter the Appeal shall be heard and decided within four weeks from the date of said appearance. In no case the time shall be extended.
- d) The appellant/accused is taken in custody and be sent to Central Jail, Nagpur.

JUDGE