

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

CRIMINAL APPLICATION (APPA) NO.132/2016
IN
CRIMINAL APPEAL NO.69/2016

Surendra s/o Ramkisan Khobragade
..Versus..

The State of Maharashtra, through its Police Station Officer, Ramnagar, Police
Station, Ramnagar, Tah. and Distt. Gondia

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATE : 15.4.2016

Heard Shri B.M. Kharkate, advocate for the
applicant/appellant and Shri N.S. Khubalkar, A.P.P. for the
non-applicant/respondent.

The appellant has filed appeal challenging the judgment
passed by the Special Court convicting him for the offence under
Section 7 of the Protection of Children from Sexual Offences Act,
2012 (for short "Act of 2012") punishable under Section 8 of the Act
of 2012 and sentenced him to suffer rigorous imprisonment for 3
years and to pay fine of Rs.500/- and in default of payment of fine
to suffer simple imprisonment for one month. The appellant is
convicted for the offence punishable under Section 354-A and

Section 354-B of the Indian Penal Code and Section 3(1)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appeal is admitted. By this application the appellant is seeking suspension of sentence.

Shri Khubalkar, learned A.P.P. has opposed the application. The learned A.P.P. has submitted that apart from ample evidence on the record and proper consideration of it by the trial Court, the offence committed by the appellant would fall under Section 9(m) of the Act of 2012 as the victim was aged about 9 years at the time of incident and it would be punishable under Section 10 of the Act of 2012 which provides for minimum term of 5 years which may be extended to 7 years. It is submitted that the Special Court overlooked the provisions of Section 9(m) and Section 10 of the Act of 2012.

The learned advocate for the appellant has submitted that as the sentence is for specific period and there is no chance that the appeal would be taken up for hearing in near future, the sentence be suspended on such terms and conditions as felt proper by this Court. In support of this submission reliance is placed on the judgment given in the case of *Bhagwan Rama Shinde Gosai and others V/s State of Gujarat* reported in **AIR 1999 SC 1859**.

Considering the findings, the submissions made by the learned A.P.P. and the provisions of Section 29 of the Act of 2012, I am not inclined to suspend the sentence at this stage. The judgment relied upon by the learned advocate for the appellant does not assist him in the facts of the present case. The application is **rejected** with liberty to the applicant to move application again if the appeal is not taken up for hearing within one year.

JUDGE

Tambaskar.