

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

CRIMINAL APPLICATION (APPA) NO.465 OF 2016

IN

CRIMINAL APPEAL NO.266 OF 2016

(Dilip s/o Chandanprasad Gupta ..vs.. State of Maharashtra, through PSO, PS Kamptee, Nagpur)

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

Court's or Judge's orders

Shri C.R. Thakur, Advocate for applicant,
Shri A.V. Palshikar, Addl.P.P. for non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : 07-12-2016

This is an application for suspension of substantive sentence imposed upon applicant and for bail.

Shri C.R. Thakur, learned Counsel for applicant has submitted that applicant is convicted for short sentence and has undergone two years and seven months of imprisonment till today and has thus submitted that application be allowed as applicant has good case on merits and there is no likelihood of appeal being heard in near future.

Shri A.V. Palshikar, learned Additional Public Prosecutor has opposed the application on the ground that applicant is father of prosecutrix, who is aged 17 years, and on this ground has opposed application for bail.

It is found that applicant having been acquitted of the offences punishable under Sections 376(2)(f)(n) and 506 of the Indian Penal Code and 5(n) and 6 of Protection of Children from Sexual Offences Act, 2012, is convicted for the offence under Section 9(n) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default of fine to suffer rigorous imprisonment for one month. Learned Trial Court while evaluating the evidence has noted that medical evidence is not supporting the case of prosecutrix on the count of complete penetrative forcible sexual assault, alleged to have repeatedly committed and has further noted that if case of prosecution as aforesaid is to be believed, then hymen cannot remain intact and there has to be external as well as internal injuries sustained by the prosecutrix. It is further found that prosecutrix while giving history to the Medical Officer did not state about penetrative sexual assault to be committed upon her and has thus held that since there is also delay in lodging report inspite of case of prosecution of prosecutrix informing about penetrative sexual assault to her mother in February itself, the trial Court found case of prosecutrix of rape to be doubtful.

Having considered facts as aforesaid, application

is liable to be allowed as applicant is found to be convicted for short sentence of five years and has already undergone a period of two years and seven months of imprisonment.

So far as the case of prosecution with regards to applicant's relation with prosecutrix as her father, application is allowed by imposing conditions as follows :

- (i) Substantive Sentence imposed upon applicant is suspended pending appeal, subject to payment of fine.
- (ii) Applicant shall be released on bail on his executing P.R.Bond in the sum of Rs.20,000/- with one surety in the like amount.
- (iii) While on bail, applicant shall stay at Nagpur and shall not enter the territorial limits of Kamptee.
- (iv) Applicant while at Nagpur shall mark his presence with the Police Station within whose jurisdiction he would be residing in Nagpur and he shall produce proof of residence with said Police Station and shall update the same in the event of change in near future.

Application is allowed in the above terms.

JUDGE