

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

Criminal Application [APPA] No.764 of 2015
in
Criminal Appeal No.422 of 2015

(Soheb Khan s/o Salim Khan

vs.

The State of Maharashtra, through P.S.O. Bhandara, District Bhandara)

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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

Shri P.N. Mehta, Advocate for the Appellant.
Shri N.B. Jawade, A.P.P. for the Respondent.

CORAM : Z.A. HAQ, J.

DATE : 29th FEBRUARY, 2016.

Heard Shri P.N. Mehta, the learned Advocate for the appellant and Shri N.B. Jawade, the learned A.P.P. for the respondent.

The appellant is seeking suspension of sentence. The appellant is convicted for the offences punishable under Sections 366-A, 376, 511 and 503 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

Shri Mehta, the learned Advocate for the appellant has referred to relevant notes of evidence to point out that the findings recorded by the learned Additional Sessions Judge holding the appellant guilty are not sustainable. The learned

Advocate for the appellant has relied on the following judgments.....

1. *Bhagwan Rama Shinde Gosai and others vs. State of Gujarat* reported in *AIR 1999 SC 1859*;
2. *Angana and another vs. State of Rajasthan* reported in *(2009) 3 SCC 767* and
3. *Suresh Kumar and others vs. State (NCT of Delhi)* reported in *(2001) 10 SCC 338*.

..... to contend that the appellant is entitled for being released on bail on suspension of sentence, as the appeal is admitted by this Court and there is no possibility that the appeal would be heard in near future.

Shri Jawade, the learned A.P.P. has opposed the prayer made on behalf of the appellant.

I proposed to hear the appeal on merits on 3rd of March, 2016, however, the learned Advocate for the appellant insisted that the application may be considered today.

I have examined the statement of the victim which was recorded on 29th of March, 2013 i.e. on the next day of the incident. I have seen the dying declaration of the victim. The victim was aged about 14 years. Though, there is no medical inspection report, *prima facie*, in my view, the findings recorded by the learned Additional Sessions Judge that sexual assault has been committed on the victim cannot be faulted with, specially considering the provisions of Section 29 of the Protection of

Children from Sexual Offences Act, 2012. The judgments relied upon by the learned Advocate for the appellant are not in case of the offences under the the Protection of Children from the Sexual Offences Act, 2012 and do not deal with the presumption as created by Section 29 of the Act.

In view of the above, I am not inclined to grant the prayer. The application is dismissed.

JUDGE

**sdw*