

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

CRIMINAL APPLICATION (APPA) NO.43 OF 2017
IN
CRIMINAL APPEAL NO.22 OF 2017

Sadhu s/o Motilal Turra

..VS..

State of Maharashtra, through Police Station Chandrapur City Chandrapur,
Tahsil and District Chandrapur

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

Court's or Judge's Order

Shri R.M. Tahaliyani, Counsel for the applicant.
Ms T.H. Udeshi, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.
DATED : JUNE 29, 2017.

This is an application for suspension of substantive jail sentence and for grant of bail.

The applicant is convicted by learned Additional Sessions Judge, Chandrapur on 18.11.2016 for the offence punishable under Section 376(2)(i) of the Indian Penal Code and on that count he is directed to suffer rigorous imprisonment for 12 years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for 6 months.

The applicant is also convicted for the offences under Section 5 punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and on that count he is

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directed to suffer rigorous imprisonment for 12 years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for 6 months.

Heard learned counsel Shri R.M. Tahaliyani for the applicant and learned Additional Public Prosecutor Ms T.H. Udeshi for the non-applicant/State.

With the assistance of learned counsel, I have gone through the evidences of PW1 mother of the victim, PW2 victim herself, and PW4 Dr. Madhuri.

According to the submissions of learned counsel Shri R.M. Tahaliyani for the applicant, though Padma was stated to be an eyewitness in first information report Exhibit 14, she is not examined by the prosecution and, therefore, adverse inference is required to be drawn against the prosecution.

Perusal of first information report Exhibit 14, which is lodged by PW1 mother of the victim, shows that in first information report she never claimed that Padma was an eyewitness. What is stated in the first information report is, her attention was drawn due to shouts of Padma. The incident has occurred inside the house of the present applicant.

PW4 Dr. Madhuri, who has examined the victim girl when she was brought to the hospital at Chandrapur, has issued certificate Exhibit 24. The evidence of PW4 Dr. Madhuri so also recital of Exhibit 24 a contemporaneous document show

that before examination of the victim girl, she has enquired with the victim girl about the incident and the victim girl has stated to PW4 Dr. Madhuri that when she was filling water, the present applicant allured her by showing bread and took her inside his house and, thereafter, touched her private part by his mouth. Exhibit 24 is immediately recorded. Therefore, there was no chance on the part either of victim girl or of her family members to falsely implicate the present applicant, which is the contention of learned counsel Shri R.M. Tahaliyanit for the applicant.

There is nothing on record to disbelieve the version of young victim girl. The perversity of the present applicant is at peak, if his acts are seen.

In that view of the matter, I see no reason to show any leniency and exercise my discretion in favour of such applicant by releasing on bail merely because he was on bail during the course of Trial.

Hence, the criminal application is rejected.

JUDGE

!! BRW !!

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