

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

CRIMINAL APPLICATION (APPA) NO.83/2017

IN

CRIMINAL APPEAL NO.92/2016

Narayan s/o Gopal Barhate

...Versus...

State of Maharashtra, through Police Station Officer, Police Station, Sonegaon,
Nagpur Tah. and Dist. Nagpur

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

Court's or Judge's orders

Shri R.M. Patwardhan, Advocate for applicant
Shri V.A. Thakare, Addl. P.P. for respondent
Shri C.S. Dharmadhikari, Advocate for Intervenor

CORAM : PRASANNA B. VARALE AND
ARUN D. UPADHYE, JJ.

DATE : 28.11.2017

1. Heard.
2. By way of the present application, the applicant prays for suspension of sentence and grant of bail. The learned Counsel for the applicant fairly submits that this is the second attempt of the applicant to approach this Court with a similar prayer. He submitted that earlier Criminal Application No.257/2016 was filed for suspension of sentence and grant of bail. By way of order dated 16/4/2016 this Court allowed to withdraw the said application and liberty was granted to apply afresh after period of six months.

3. The learned Counsel for the applicant submitted that the period of six months is lapsed and there is hardly any chance that the appeal filed by the appellant would come up for early hearing, in view of the heavy pendency of the appeals. The learned Counsel then submitted that the learned trial Court was pleased to acquit the applicant/appellant for the offence punishable under Section 376 of Indian Penal Code. The learned Counsel then submitted that the evidence brought by the prosecution hardly supports the case even for awarding punishment under Section 9 (m) and Section 10 of the Protection of Children from Sexual Offences Act, 2012. Learned Counsel for the applicant by inviting our attention to the evidence and more particularly the medical evidence submitted that assuming though not admitting the case against the applicant would fall for a lesser offence and certainly not for Sections 9 and 10 of the Protection of Children from Sexual Offences Act. He further submitted that considering the medical evidence at the most the case against the applicant would fall under Section 7 of the Protection of Children from Sexual Offences Act and for the said offence the applicant/appellant may suffer a punishment for a period of three years. Learned Counsel for the applicant submitted that the applicant who was engaged in a private job would not continue with the private job. The family status of the applicant is that his two daughters are married and the only member in his family is the wife of the applicant and she needs support of the applicant. Learned Counsel for the applicant submitted that there is no criminal antecedents against the applicant. The applicant who was on bail during the trial had scrupulously followed the

conditions while he was enlarged on bail. There is nothing on record to show that the applicant committed breach of any conditions. Learned Counsel for the applicant then submitted that the applicant is behind bars for one year and eleven month, i.e., nearly two years. Thus, the learned Counsel for the applicant prays for suspension of sentence and grant of bail.

4. Though the learned Additional Public Prosecutor opposes the application, the learned Additional Public Prosecutor is not disputing that during the trial the applicant was on bail and there is nothing on record to show that the applicant committed breach of any conditions or misused the liberty granted to the applicant. There is substance in submission of learned Counsel for the applicant that it may take some time to take the appeal for final hearing in view of the heavy pendency of the appeals. Learned Counsel for the applicant has made out a case for grant of bail. Hence, the following order.

ORDER

- (i) The criminal application is allowed.
- (ii) The substantive sentence of imprisonment shall stand suspended during the pendency of the appeal.
- (iii) The applicant/accused be released on bail on the same terms and conditions as they were before the trial Court with fresh bail bonds.

JUDGE

JUDGE