

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

CRIMINAL APPLICATION (APPA) NO.424 OF 2017

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CRIMINAL APPEAL NO.257 OF 2017

Rahul s/o Janrao Khade

..VS..

State of Maharashtra, through Police Station Officer, Police Station Yeoda,
Taluka Daryapur, District Amravati

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

Court's or Judge's Order

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Shri R.M. Patwardhan, Counsel for the applicant.

Ms T.H. Udeshi, Addl.P.P. for the non-applicant/State.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 3, 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 at Achalpur in Special (P) Case No.64 of 2014
dated 24.5.2017 for the offences punishable under Section 376(2)
(n) of the Indian Penal Code, 1860 as well as under Section 6 of
the Prevention of Children from Sexual Offences Act (POCSO
Act), 2012 and is sentenced in graver offence i.e. under Section 6
of the POCSO Act, 2012 to suffer 10 years rigorous imprisonment
and to pay a fine of Rs.3,000/- and in default of payment of fine
amount to suffer further imprisonment upto 6 months.**

**This Court Admitted the present appeal on 8.6.2017
and the present application was placed for consideration after**

receipt of record and proceedings.

I have heard learned counsel Shri R.M. Patwardhan for the applicant and learned Additional Public Prosecutor Ms T.H. Udeshi for the non-applicant/State.

Even according to the prosecution, the age of the prosecutrix was 16 years.

Perusal of evidence, in respect of the age, *prima facie* shows that the prosecution has not strictly proved the age. Further, the evidence of the prosecutrix is marred with material omissions. The defence has also examined witnesses.

Looking to nature of quality of evidence, that is adduced on record by the prosecution, and in view of the fact that the applicant was on bail during the course of Trial and the applicant is a Government servant whose presence will be made available to the Course of justice, I exercise my discretion in favour of the present applicant. Hence, I pass the following order:

ORDER

i) The criminal application is allowed.

ii) Substantive jail sentence, imposed upon the present applicant by learned Additional Sessions Judge at Achalpur in Special (P) Case No.64 of 2014 dated 24.5.2017, shall remain suspended during the pendency of the present appeal.

iii) The applicant be released on bail on he executing a P.R. Bond in the sum of Rs.10,000/- (rupees ten thousand only) with two solvent sureties.

iv) The applicant shall personally remain present before this Court at the time of final hearing of the appeal.

v) With this, the criminal application is allowed and disposed of.

JUDGE

!! BRW !!