

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

CRIMINAL APPLICATION [APPA] NO.439 OF 2017

IN

CRIMINAL APPEAL NO.264 OF 2017

[Rekha Sheshrao Gawai .vs. The State of Maharashtra]

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

Court's or Judge's orders

CORAM : KUM. INDIRA JAIN, J.

DATED : OCTOBER 13, 2017.

By this application, applicant-accused no.2 is seeking suspension of substantive sentence of imprisonment awarded vide judgment and order dated 28.4.2017 by the learned Additional Sessions Judge and Special Judge, Khamgaon in Sessions Trial No.108/2014 thereby convicting the applicant of the offence punishable under section 376 (2) (i) (n) r/w 109 of the Indian Penal Code. Applicant is sentenced to suffer rigorous imprisonment for ten years and fine of Rs.1,000/- in default rigorous imprisonment for six months. She is also convicted of the offence punishable under section 6 r/w 17 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to the same term and fine as for the offence under the Indian Penal Code.

Heard Shri S.V. Sirpurkar, learned counsel for applicant and Shri N.H. Joshi, learned APP for respondent-State.

The learned counsel for applicant submits that accused was on bail during trial. He never misused the liberty. It is submitted that husband of

applicant-accused is a mentally ill person and she has to maintain four children. She is a labourer and in case sentence is not suspended, the entire family will have to starve.

According to learned APP, there is clinching evidence against the accused that she abetted commission of serious crime. It is submitted that considering the role attributed to accused no.2 by the prosecutrix, this would not be an appropriate case to suspend the substantive sentence of imprisonment.

True, prosecutrix supports the case of prosecution against accused no.2 and she states in evidence about the role played by accused no.2. However, without going into the merits and demerits of the case, this court, considering the submissions made on behalf of accused no.2, that her husband is mentally retarded and she has to look after four children, this court is inclined to allow the application, particularly when applicant was on bail during trial and there are no complaints that she had misused the liberty. Hence the following order:

(i) The execution of substantive sentence of imprisonment is suspended during pendency of appeal on applicant's furnishing PB & SB of Rs.25,000/- each to the satisfaction of the trial court.

(ii) Criminal Application No.439/2017 is allowed in the above terms.

JUDGE