

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

CRIMINAL APPEAL NO.339 OF 2017

(Digambar @ Digu S/o Kantilal Thakare..vs.. State of Maharashtra, through PSO.PS.Sakoli,District-Bhandara

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

Court's or Judge's orders.

Shri A.M.Quazi, Advocate for appellant.
Shri R.S.Nayak, A.P.P. for respondent-State.

CORAM : V.M. DESHPANDE, J.
DATED : AUGUST 2, 2017

Heard learned counsel for the appellant.

This appeal is against the conviction imposed upon the appellant by learned Additional Sessions Judge, Bhandara convicting him for the offence punishable under Section 8 of the Protection of Children From Sexual Offences Act, and directed to suffer R.I. for three years and to pay fine of Rs. 5000/- and in default of payment of fine, further to suffer S.I. for six months.

Admit.

The learned A.P.P. waives the service of notice on behalf of respondent-State.

CRIMINAL APPLICATION (APPA) NO.590 OF 2017

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

Heard learned advocate for applicant and learned A.P.P. for State-respondent.

The applicant is convicted for the offence punishable under Section 8 of the Protection of Children From Sexual Offences Act, and directed to suffer R.I. for three years and to pay fine of Rs. 5000/- and in default of payment of fine, further to suffer S.I. for six months.

The defence as appears is of total denial and false implication.

I perused the evidence of Bina(PW1). Her evidence shows that the prosecutrix was 7 years old and the first informant and other family members had been to the house of the appellant for lunch that was arranged in respect of obsequies of the grand father of the appellant.

As per the prosecution case, the appellant went to school of the prosecutrix and she was brought to the house of the prosecutrix and there the offence was committed.

The evidence of Bina(PW1) shows that the keys of the house were kept with the prosecutrix when entire family members were present in the house of the appellant. Prima facie, it appears improbable that the keys will be with the girl who is already in school and who is of her tender age. Further, scientific evidence absolved the present applicant-appellant. In view of these facts, and the fact that applicant was on bail during the course of trial I see no reason to exercise the discretion. Further, the applicant is sentenced only for a period of three years and in future looking to the pendency of the criminal appeals it will not be possible for this Court to decide the appeal early.

The applicant is already released on bail by the learned Court below by exercising the discretion under

Section 389(3) of the Code of Criminal Procedure.

ORDER

- I) The application is allowed.
- II) The substantive jail sentence imposed upon the applicant Digambar @ Digu S/o Kantilal Thakare shall remain suspended during the pendency of the appeal.
- III) The applicant be released on bail on his execution of fresh P.R. and S.B. of same amount.
- IV) The applicant shall remain present personally at the time of final hearing.
- V) With this the application is disposed of.

**CRIMINAL APPLICATION NOS. 573 OF 2017
AND 574 OF 2017**

In view of the order passed on Criminal Application No.590/2017, no order is necessary on these applications.

The applications are disposed of .

JUDGE