

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

CRIMINAL APPLICATION [APPA] NO.707 OF 2017
IN
CRIMINAL APPEAL NO.417 OF 2017

(Yogesh Pyarelal Machirke

vs.

The State of Maharashtra, through P.S.O. Hudkeshwar, Nagpur)

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

Court's or Judge's Orders

CORAM : KUM. INDIRA JAIN, J.

DATE : 20th NOVEMBER, 2017.

By this application under Section 389 of the Code of Criminal Procedure, applicant-accused is seeking suspension of substantive sentence of imprisonment awarded by learned Special Judge (POCSO), Nagpur vide judgment and order dated 17/07/2017 passed in Special Child Protection Case No.129/2013.

By the said judgment and order, accused has been convicted of the offence punishable under Section 376(1) of Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years with fine of Rs.1,00,000/-, in default to suffer rigorous imprisonment for one year. Accused was also

prosecuted for the offence punishable under Sections 3(2)(v) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has been acquitted for the same.

Heard Shri R.K. Tiwari, learned Counsel for the applicant and Mrs. S.V. Kolhe, learned A.P.P. for the State.

With the assistance of learned Counsel for the parties, perused the impugned judgment and order, and depositions of prosecutrix, her mother and Medical Officer as well.

It appears from the evidence that incident occurred between January, 2010 and October, 2011. Report of incident came to be lodged for the first time on 29/03/2013. The mother of prosecutrix though attempted to explain delay in her evidence, report is silent regarding the same. At the time of incident, prosecutrix was below 16 years of age, but above 15 years. Throughout accused remained on anticipatory bail granted by this Court.

Considering the term of sentence awarded by the trial Court, nature of offence

alleged against the accused and the evidence of prosecution witnesses, this Court is inclined to allow the application. Hence, the following order :

ORDER

- I. The substantive sentence of imprisonment awarded by the trial Court is suspended during pendency of appeal on applicant's furnishing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount to the satisfaction of the trial Court.
- II. Criminal application is allowed and disposed of in the above terms.

*sdw

JUDGE