

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

CRIMINAL APPLICATION [APPA] NO.872 OF 2017

IN

CRIMINAL APPEAL NO.315 OF 2017

[Shekhar @ Sachin s/o Manohar Bhure .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.

Heard Shri N.B. Kalwaghe, learned counsel for applicant and Shri Shyam Bissa, learned APP for respondent-State.

Applicant-accused no.1 has been convicted of the offence punishable under section 376 (2)(i)(n) of the Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act and Section 506-Part (I) of the Indian Penal Code.

The learned Special Judge, Bhandara, vide judgment and order dated 5.7.2017 in Special Cri. (Child) Case No.3/2015 sentenced the applicant for the said offences. The maximum sentence imposed is rigorous imprisonment for 10 years.

The learned counsel for applicant submits that accused no.1 was on bail during trial and he had never misused the liberty. It is submitted that age of the prosecutrix is not proved, the evidence of mother of victim would indicate that at the relevant time prosecutrix was around 21 years of age, medical evidence is not clinching and does not connect the accused to the commission of crime.

The learned counsel submits that considering the drawbacks in the case of prosecution, accused ought not to have been convicted.

The learned APP, in reply, submits that prosecutrix has supported the case of prosecution and there is no reason for her to tell a lie. According to learned APP, conviction can be solely based on the evidence of prosecutrix and considering the nature of offences proved against the accused, it would not be a fit case to suspend the substantive sentence of imprisonment.

On perusal of evidence of PW-3 Baby Dhanraj Bhunde, mother of prosecutrix and the facts elicited in her cross-examination, it can be seen that prosecutrix, at the time of incident, was above 18 years of age. Admittedly, investigating agency has not made efforts to collect the documents relating to age of the prosecutrix. Trial Court placed reliance on the testimony of prosecutrix, who for the first time, stated her date of birth in evidence.

In the light of the above and as applicant was on bail during trial, he did not misuse the liberty, this court is inclined to suspend the substantive sentence of imprisonment. Hence, the following order :

ORDER

(i) The execution of substantive sentence of imprisonment is suspended during pendency of appeal on applicant's furnishing PB & SB of Rs.15,000/- each to the satisfaction of the trial court.

(ii) Criminal Application No.872/2017 is allowed in the above terms.

JUDGE

Gulande