

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

CRIMINAL APPLICATION [APPA] NO.1015 OF 2017

IN

CRIMINAL APPEAL NO.497 OF 2017

[Vinod Dayaram Kuthe .vs. 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 : DECEMBER 04, 2017.

Heard Shri A.S. Band, learned counsel for applicant-appellant and Mrs. S.V. Kolhe, learned APP for respondent-State.

By this application under section 389 of the Code of Criminal Procedure, applicant-accused is seeking suspension of substantive sentence of imprisonment awarded by the learned Special Judge, Wardha vide judgment and order dated 1.9.2017 in Special (Ch.) Case No.14/2011. By the said judgment and order, accused has been convicted of the offences punishable under sections 363 and 376 of the Indian Penal Code.

PW-4 is the prosecutrix. It appears from her evidence that she was called by the accused on phone. Thereafter, accused took her to various places. She accompanied the accused to the different places. During their stay, they had physical contacts.

The learned APP submitted that at the relevant time prosecutrix was below 16 years of

age. Medical evidence is positive and in such circumstance, considering the seriousness of offence, accused may not be released on bail.

So far as date of birth of prosecutrix is concerned, prosecution has relied upon birth certificate indicating the date of birth of prosecutrix as 17.5.1995. Incident occurred on 27.2.2011. She was above 15 years of age and was a girl of sufficient maturity.

The learned counsel for applicant submits that accused was on bail during trial and had deposited fine.

Considering the evidence of prosecutrix and as accused was on bail during trial, this court is inclined to allow the application. Hence, the following order :

ORDER

- i) The execution of substantive sentence of imprisonment is suspended during pendency of appeal on applicant's furnishing personal bond in the sum of Rs.15,000/- with one solvent surety in the like amount to the satisfaction of the trial court.
- ii) Criminal Application No.1015/2017 is allowed and disposed of.

JUDGE