

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

CRIMINAL APPLICATION (APPA) NO.39/2018

IN
CRIMINAL APPEAL NO.31/2018
Hiraman s/o Vithobha Gurfude

..VS..

State of Mah., thr. PSO PS Bramhapuri, Taluka Bramhapuri, District Chandrapur

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

Court's or Judge's Order

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Shri V.N. Morande, Counsel for the applicant/appellant.
Shri N.R. Rode, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.
DATED : MARCH 8, 2018.

1. This is an application under Section 389 of the Code of Criminal Procedure for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri V.N. Morande for the applicant/appellant and learned Additional Public Prosecutor Shri N.R. Rode for the State.
3. The applicant/appellant is convicted by learned Judge, Special Court in Special (POCSO) Case No.59/2014 for the offences punishable under Sections 448 and 354 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, 2012.
4. The applicant/appellant is directed to suffer rigorous

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imprisonment for 1 year and to pay a fine of Rs.1000/- and, in default of payment of fine amount, to undergo rigorous imprisonment for 1 month, on account of his conviction for the offence punishable under Section 448 of the Indian Penal Code.

5. The sentence of the applicant/appellant, on account of his conviction under Section 354 of the Indian Penal Code, is sufferance of rigorous imprisonment for 3 years and to pay a fine of Rs.10,000/- and, in default of payment of fine amount, to undergo rigorous imprisonment for 2 months.

6. The applicant/appellant also received an order of sentence since he was convicted for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and on that count he was directed to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.20,000/- and, in default of payment of fine amount, to undergo rigorous imprisonment for 3 months.

7. All the sentences are directed to run concurrently.

8. This appeal was admitted on 22.1.2018 and consideration of the present application was deferred, till receipt of record and proceedings.

9. The record and proceedings are received.

10. With the assistance of learned counsel Shri V.N. Morande for the applicant/appellant, I have gone through the record and proceedings.

11. *Prima facie*, I am of the view that the applicant/appellant has made out a case for suspension of substantive jail sentence and for grant of bail in view of the nature of evidence i.e. available on record. Further, the applicant/appellant was on bail during the course of the Trial and at no point of time he has mis-used the liberty granted to him in his favour. Hence, this Court passes the following order:

ORDER

(i) The criminal application is allowed.

(ii) The substantive jail sentence imposed upon the applicant/appellant by learned Judge, Special Court, Chandrapur in Special (POCSO) Case No.59/2014 for the offences punishable under Sections 448 and 354 and under Section 8 of the Protection of Children from Sexual Offences Act, 2012, shall remain suspended during the pendency of the present appeal.

(iii) The applicant/appellant shall be released on bail on his executing a P.R. Bond in the sum of Rs.10,000/- (rupees ten thousand only) with one solvent surety of the like amount.

(iv) The bail before the Trial Court.

(v) At the time of execution of the bail bonds, the Trial Court is directed to ensure that the entire fine amount is deposited in the Court.

(vi) Unless and until the entire fine amount is deposited, the bail bonds shall not be accepted by learned Judge of the Court below.

(vii) The applicant/appellant shall personally remain present at the time of final hearing of the present appeal.

(viii) With this, the criminal application is allowed and disposed.

JUDGE

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