

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

CRIMINAL APPLICATION (APPA) NO.415/2018

IN

CRIMINAL APPEAL NO.184/2018

Bhimrao s/o Vyankatrao Gajbhiye

..vs..

State of Mah., thr. Police Station Officer Sitabuldi, Nagpur

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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 A.K. Bhangde, Counsel for the applicant/appellant.

Shri N.S. Rao, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : MAY 3, 2018.

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri A.K. Bhangde for the applicant/appellant and learned Additional Public Prosecutor Shri N.S. Rao for the State.
3. The applicant/appellant is convicted on 14.3.2018 by learned Additional Sessions Judge (Special Court), Nagpur in Special Case (POCSO) No.178/2016 for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and is directed to suffer rigorous imprisonment for 4 years and to pay a fine of Rs.10,000/- and, in default of payment of the fine amount, to suffer rigorous imprisonment for 6 months.

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4. On 26.3.2018, the appeal was admitted. The record and proceedings are available

5. With the assistance of learned counsel Shri A.K. Bhangde for the applicant/appellant and learned Additional Public Prosecutor Shri N.S. Rao for the State, I have gone through evidences of victim (PW1) and mother of the victim (PW2). These two witnesses are relevant for deciding the present application.

6. As per First Information Report (F.I.R) (Exhibit 12), services of the applicant/appellant as auto-rickshaw driver were engaged by the mother of the victim for a period of 10 days, which was examination period. According to the prosecution, on the day of the occurrence, the applicant/appellant pressed breast of the victim in running auto-rickshaw and when she tried to resist, he tried to drag her dress. It is further version in the F.I.R. and also in the evidence of the victim that when she started running from the auto-rickshaw, she met with an unknown lady and the incident was narrated to her and the said lady reached the victim to school.

7. It is to be noted that the said lady is not examined by the prosecution. Further, it is brought on record that in the auto-rickshaw there were other 2-3 students and those are also not examined by the prosecution.

8. Learned counsel Shri A.K. Bhangde for the applicant/appellant submitted that during the course of the Trial the applicant/appellant was on bail and at no point of time he has

misused the liberty granted to him in his favour.

9. Looking to the nature of evidence as it is brought on record, *prima facie* case is made out for bail. Further, it will not be possible for this Court the appeal being taken up for final hearing in near future. Hence, I pass the following order:

ORDER

(i) The criminal application is allowed.

(ii) The substantive jail sentence imposed upon the applicant/appellant on 14.3.2018, by learned Additional Sessions Judge (Special Court), Nagpur in Special Case (POCSO) No.178/2016 for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012, shall remain suspended during the pendency of the present appeal.

(iii) Applicant/appellant Bhimrao s/o Vyankatrao Gajbhiye, be released on bail on he executing a P.R. Bond in the sum of Rs.5000/- with two solvent sureties of the like amount.

(iv) The bail before the Trial Court.

(v) Learned Judge of the Court below, before whom the Bail Bond will be executed, shall ensure that the entire fine amount is paid by the applicant/appellant.

(vi) The applicant/appellant shall not extend any type of threats to the victim.

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

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

JUDGE

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