

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

CRIMINAL APPLICATION (APPA) NO.499/2018

IN

CRIMINAL APPEAL NO.353/2018

Chandkha s/o Ibrahimkha Pathan

..VS..

The State of Maharashtra, through its PSO Police Station Samudrapur,
District Wardha

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

Court's or Judge's Order

.....
Shri G.G. Nagrale, Counsel for the applicant.
Mrs. S.V. Kolhe, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 27, 2018.

1. Heard learned counsel Shri G.G. Nagrale for the applicant and learned Additional Public Prosecutor Mrs. S.V. Kolhe for the State.
2. This is an application under Section 389 of the Code of Criminal Procedure for suspension of substantive jail sentence and for grant of bail.
3. The applicant is convicted by order dated 2.4.2018 passed by learned Additional Sessions Judge, Hinganghat in Special (Child) Case No.1/2017. By the said order, the applicant was convicted for offences punishable under Sections 363, 366-A, and 376(2)(i) of the Indian Penal Code and he is directed to suffer rigorous imprisonment for 3, 5, and 10 years

.....2/-

respectively along with different amount of fine.

4. Learned counsel Shri G.G. Nagrale for the applicant submits that during the course of the Trial, the applicant was on bail and at no point of time he has misused liberty granted to him in his favour.

5. Merely because the applicant was on bail, said cannot be the criteria for considering the application for bail post conviction and for suspension of substantive jail sentence.

6. The prosecution case against the applicant was that on 5.11.2013 he committed forcible sexual intercourse with the victim, a minor girl (PW2). The victim in her evidence has specifically stated that her date of birth is 28.7.1999. The said is re-affirmed in her cross-examination itself. The prosecution filed the birth certificate duly issued by competent authority which is available on record at Exhibit 63. That shows date of birth of the victim is 28.7.1999. Thus, on the day when the applicant committed forcible sexual intercourse, the victim was a minor child. In spite of that, it appears that learned Judge of the Court below has not convicted the applicant under the relevant provisions of the Protection of Children from Sexual Offences Act, 2012. The said can be considered at the time of final hearing of the appeal.

7. Doctor Mayuresh Manohar Wasnik (PW8),

who examined the victim, was examined by the prosecution. His evidence specifically shows that the victim received injuries on her body and there was an injury to her hymen.

8. Submission of learned counsel Shri G.G. Nagrale, based on only suggestion that the hymen injury can be self inflicted, cannot be considered at this stage without there being any further cross-examination of the doctor.

9. At the relevant time, the age of the applicant was 54 years and the age of the victim was 14 years. The Court cannot turn blind eyes as to what is happening in the society. Such types of cases have to be considered and dealt with sternly. The prosecution since successfully established that the applicant has committed forcible sexual intercourse on a minor girl aged about 14 years, I refrain myself from exercising my discretion in favour of the applicant. Consequently, the application is dismissed and disposed of accordingly.

10. Since the applicant is in jail, Office is directed to prepare paper-book immediately and place the matter for its final hearing.

JUDGE

!! BRW !!

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