

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPLICATION (APPA) NO.989/2018****IN CRIMINAL APPEAL NO.594/2018**

Pankaj Bhaurao Salve .vs. State of Maharashtra through PSO P.S. Digras,
Tq. Digras, Dist. Yavatmal.

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

Court's or Judge's orders.

Mr. Anand Deshpande, Advocate for applicant.

Mr. M. K. Pathan, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 7, 2018

This is an application under Section 389 of the Code of Criminal Procedure for suspension of jail sentence and for grant of bail.

Heard Mr. Deshpande, learned counsel for the applicant and Mr. Pathan, learned A.P.P. for non applicant-State.

The applicant stands convicted for an offence punishable under Section 354-A of the Indian Penal Code and under Section 8 of the Protection of Children From Sexual Offences Act and is directed to suffer rigorous imprisonment for 4 year and to pay a fine of Rs.3,000/-. He is also convicted for the offence under Section 451 of the IPC and sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1000/-.

The notes of evidence are placed on record by the applicant. According to the prosecution case, on the date of incident, the applicant gained entry in the house

of the victim girl stealthily. When she shouted, her sister and other family members wake up. While running away from the spot, according to the prosecution, he was seen by one Bhimrao Kamble, an independent witness. Learned counsel for the applicant submits that in spite of availability of an independent witness, he was not examined for the reasons best known to the prosecution and the said fact is not disputed by Mr. Pathan, learned A.P.P. for the State.

It is submitted that applicant was on bail throughout during the course of trial and at no point of time, the applicant has misused liberty granted to him.

The applicant is sentenced for a limited duration and therefore, in view of the law laid down by the Hon'ble Apex Court in *Bhagwan Rama Shinde Gosai and Others vs. State of Gujarat*; reported in *1999 SCC (CRI) 553*, his prayer for bail is required to be considered however subject to some stringent conditions.

Even otherwise, presently, this Court is taking up the jail appeals and in the near future, the final hearing of the present appeal is not possible.

In that view of the matter, I am of the opinion that discretion can be exercised in favour of the applicant. Hence, I pass the following order.

ORDER

- (i) Criminal Application is allowed.
- (ii) Substantive jail sentence imposed upon the applicant by judgment and order dated 12.09.2018

passed by Special Judge, Darwha, in Special Case No.19/2017, shall remain suspended during the pendency of the present appeal.

(iii) Applicant-Pankaj Bhaurao Salve be released on bail on he executing P.R. Bond in the sum of Rs.5,000/- with one solvent surety in the like amount.

(iv) The Court below, before whom the bail bonds will be executed, shall ensure that prior to release of the applicant, the applicant deposits entire amount of fine imposed on him on various counts by the Court below.

(v) The applicant is directed to attend Police Station Digras, District Yavatmal once in every six months i.e. on 1st June and 31st December of every year in between 5.00 to 6.00 p.m., till final disposal of the present appeal.

(vi) The applicant shall not, in any manner, cause any types of threats to the victim or to any of her family members.

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

The application is disposed of .

JUDGE