

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

CRIMINAL APPLICATION (APPA) NO.330 OF 2019
IN
CRIMINAL APPEAL NO.229 OF 2019

(Siddharth s/o Devidas Bankar (Originally Sidhant s/o Devidas Bankar) (In Jail) Vs.
The State of Maharashtra thr. PSO PS MIDC, Nagpur)

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

Court's or Judge's orders.

Shri P.S. Wathore, Advocate for Appellant.
Shri T.A. Mirza, APP for Respondent/State.

CORAM: ROHIT B. DEO, J.

DATE: 3rd JUNE, 2019.

The appellant is convicted for offence punishable under section 377 and 506-B of the Indian Penal Code and section 3(a) read with section 4, section 5(1)(m) and section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and is sentenced to suffer rigorous imprisonment of ten years.

2] Shri Wathore, the learned counsel for the appellant submits that the evidence on record is fragile. He would emphasize that even according to the Doctor who examined the child, the Doctor is not in a position to state whether he submitted the final report. Shri Wathore would rely on the decisions of the Supreme Court in *Bhagwan Rama Shinde Gosai and others v. State of Gujarat* reported in (1999) 4 SCC 421, *Suresh Kumar and others v. State (NCT of*

Delhi) reported in (2001) 10 SCC 338 and *Kiran Kumar v. State of M.P.* reported in (2001) 9 SCC 211, to buttress the submission that if the imprisonment is of fixed duration, ordinarily the Court must adopt a liberal approach in suspending the sentence.

3] The accusation against the appellant, which accusation is found proved by the trial Court, is that he subjected the child aged 11 years to unnatural sexual intercourse. I have scrutinized the evidence on record, and having done so, *prima facie* I am not persuaded to accept the submission that the evidence against the accused is fragile or untrustworthy. It would not be appropriate to make any decisive observation on the quality of the evidence, at this stage.

4] The presumption of innocence which was available to the accused is no longer available in view of the conviction. It must be borne in mind, that section 29 of the POCSO Act provides for reverse burden. The foundational facts having been proved by the prosecution, *prima facie*, it was the burden of the appellant to prove his innocence. Suffice it to say, at this stage and for the limited purpose of considering the right of the appellant to suspension of sentence, that this burden is not discharged.

5] The decisions on which reliance is placed do not take the case of the appellant any further. The offence is

heinous and it would not be in societal interest to suspend the sentence and release the appellant on bail.

6] The application is without substance and is rejected.

7] The appeal shall be taken up for final hearing immediately after the paper book is prepared. The Registry is directed to prepare the paper book within three months.

JUDGE