

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

CRIMINAL APPLICATION (APPA) NO.428 OF 2019
IN
CRIMINAL APPEAL NO.324 OF 2019

(Snehal Pruthviraj Bansod Vs. State of Maharashtra thr. PSO PS Jaripatka, Nagpur)

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

Court's or Judge's orders.

Shri M.N. Ali, Advocate for Appellant.
Shri T.A. Mirza, APP for Respondent/State.

CORAM: ROHIT B. DEO, J.
DATE: 7th JUNE, 2019.

Heard.

2] The applicant is seeking suspension of sentence imposed in view of conviction under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 376(1) of the Indian Penal Code.

3] Shri Mir Nagman Ali, the learned counsel for the appellant states that the sentence is of fixed duration that is rigorous imprisonment of seven years and it would therefore, be proper if the sentence is suspended. On facts, the submission is that the evidence of the prosecutrix is not trustworthy and the incident of alleged forcible sexual intercourse could not have happened at the place and in the manner alleged by the prosecution.

4] *Prima facie*, I find, that the prosecution conclusively established by the victim was less than 18 years and therefore, a child attracting the provisions of POCSO Act. While considering the question of suspension of sentence and grant of bail, I cannot be unmindful of the statutory presumption under Section 29 of the Act which is activated in view of the prosecution establishing the foundational facts.

5] I further find that at least *prima facie*, nothing is brought on record to dislodge the testimony of the child victim. The DNA profiling report implicates the accused. I would refrain from considering the evidence on record in greater detail, or to make any decisive observation on the probative value thereof. However, I am satisfied that no case is made out for exercise of discretion in favour of the applicant. The record is received. I was inclined to dispense with the paper book and to take up the appeal for final hearing forthwith or within a week. However, the learned counsel for the appellant Shri Mir Nagman Ali states that the paper book may not be dispensed with and instead the preparation thereof be expedited.

6] In this view of the matter, while the application for suspension of sentence is rejected, the registry is directed to expedite the paper book. Let the appeal be listed on the final hearing board immediately after the paper book is prepared, which shall be done within three months.

7] The application is disposed of in the aforestated terms.

JUDGE

NSN