

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

CRIMINAL APPLICATION (APPA) NO.1158/2018

IN

CRIMINAL APPEAL NO.741/2018

Ganesh @ Pawan s/o Jagdish Mantri

..VS..

State of Mah., thr. Police Station Officer Washim, Tahsil and District
Washim

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

Court's or Judge's Order

.....
Shri P.H.Khobragade, Counsel for the Applicant
(Appointed).

Shri A.D.Sonak, Additional Public Prosecutor for the State.

CORAM : V.M.DESHPANDE, J.

DATED : APRIL 29, 2019.

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard learned counsel Shri P.H.Khobragade appointed through the High Court Legal Services Sub Committee at Nagpur to represent the applicant/appellant and learned Additional Public Prosecutor Shri A.D.Sonak for the State.

3. By judgment and order of conviction dated 27.3.2018 passed by learned Additional Sessions Judge, Washim in Special Child Case No.22/2017, the applicant was convicted for offences under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 377 of the Indian Penal Code and directed to

suffer rigorous imprisonment for 10 years and to pay a fine of 10,000/-.

4. On 27.11.2018, the present appeal was admitted and it was ordered that present application to be considered after receipt of record and proceedings of the case.

5. The record and proceedings are received.

6. Learned counsel for the applicant submits that in cross-examination, Dr.Prasad Hirwe (PW3) has stated that injury to annul of victim can be caused by self infliction. He, therefore, submits that the applicant be released on bail.

7. Victim in this case is PW5. At the time of incident, his age was 5 years. He used to call the applicant as uncle. His evidence shows that on the day of incident, the applicant put his male organ in his mouth as well as in his anus. Cross-examination of tender age boy does not destroy core of the prosecution case.

8. Victim was examined on 21.3.2017 i.e. on the day of incident itself. Dr.Prasad Hirwe (PW3), after examination of victim, found that there is abrasion on annul region of victim having size 2"x1" cms. Clinical examination of victim corroborates his version. Further, there was no reason for victim to falsely implicate the applicant in the crime.

9. The applicant was not on bail during the Trial.

10. In view of the aforesaid, I am of the opinion that the applicant has not made out *prima facie* case for suspension of the substantive jail sentence. Hence, the

.....3/-

criminal application is rejected and disposed of accordingly.

11. The High Court Legal Service Sub Committee at Nagpur is directed to pay Rs.2500/- to learned counsel Shri P.H.Khobragade appointed to represent the applicant.

JUDGE

!! BRW !!

...../-