

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO.1765 OF 2020
IN APPEAL/526/2020 WITH APPEAL/526/2020

SHANKAR YELAPPA WAGHMARE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. J.M. Murkute, Advocate for applicant

Mr. S.W. Munde, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th OCTOBER, 2020

ORDER :

1 Present application has been filed for suspension of sentence. The present applicant has been convicted in Special (POCSO) Case No.35/2014 by learned Extra Joint District Judge and Additional Sessions Judge, Latur on 03.09.2020. He has been sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.500/-, in default to suffer simple imprisonment for two months, for the offence punishable under Section 376(2)(i) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act.

2 Heard learned Advocate Mr. J.M. Murkute for appellant-applicant and learned APP Mr. S.W. Munde for respondent.

3 It has been submitted on behalf of the applicant, that the learned Trial Judge has not appreciated the evidence properly. The age of the victim has not been properly proved. The informant, who is the mother of victim, was not immediately present and it is stated, that when she returned at about 5.30 p.m., thereafter victim had informed her the incident. She was not even knowing the name of the accused and had given wrong surname. The cross-examination of the victim would show, that there were no stresses of dragging the girl. The situation, that has come on record, would show, that it would be impossible to take a girl aged 14 in such a way as claimed in the prosecution story. The father of the victim was refused to take the mangoes from the field of one Bukke, with whom the appellant was working. On the day of incident, when the victim was taking drumsticks from the field of one Mandade, at that time, victim has refused him to take, there was quarrel between them, and therefore, he has been falsely implicated. He was on bail throughout the trial. He has high hopes in the appeal, and therefore, the sentence needs to be suspended.

4 Per contra, the learned APP objected the application and

submitted, that there is ample evidence against the appellant. The ocular evidence is supported by the medical evidence. The Trial Judge has rightly convicted the appellant.

5 Though it appears that the present appellant was on bail throughout the trial, yet, now, when we have at a stage to see, as to whether the sentence can be suspended or not, we will have to take into consideration the evidence, that has come. Though the informant-mother of the victim got the information about the incident from the victim, the victim has been examined. She has specifically stated that her age is 14 and there appears to be no much dispute about her age, so also, the fact, that she has told about the presence of two persons immediately after the incident – one is Ganesh and another is Laxmi. Laxmibai has been examined as PW 5. She went to the spot after she heard the cries of the victim. When she saw the victim, there were no clothes on her person. Accused was present there. He was not wearing pant, at that time, and she has also stated that when Ganesh came, at that time the accused put his pant and fled away. Ganesh has also been examined. He says that when he went to the place after hearing the cries of a girl, he found accused as well as victim. There were no clothes on the person of victim. He had asked the accused, as to why he has come there. He told that he had come to drink water. Now, it is required to be

seen, as to whether these witnesses can be believed or not. But as regards prosecution is concerned, the prosecution has examined them. Further corroboration is with the medical. Under such circumstance, prima facie there appears to be evidence against the appellant, which dis-entitles him from releasing on bail, though the sentence imposed against him can be said to be short sentence. In **Kiran Kumar vs. State of M.P., (2001) 9 SCC 211**, the Hon'ble Supreme Court has stated, that if it is not possible to take up the matter immediately, then in short sentence cases the Court may consider suspension of sentence. Here, by expediting the appeal the matter can be heard, and therefore, the application stands rejected and appeal stands expedited.

(Smt. Vibha Kankanwadi, J.)

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