

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

CRIMINAL APPLICATION (APPA) NO. 121/2020 IN
CRIMINAL APPEAL NO. 90/2020

Rahul S/o. Babanrao Bhivgade

-VERSUS-

State of Maharashtra

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

Court's or Judge's Orders

Shri R. M. Daga, Advocate for applicant.
Ms. H. N. Jaipurkar, APP for non-applicant.

CORAM : VINAY JOSHI, J.

DATE : 14.12. 2020.

Heard.

2. The accused is seeking suspension of execution of sentence passed in Special Case No. 260/2016. The Trial Court convicted the accused for the offence punishable under Sections 376(2)(n) of the Indian Penal Code along with Section 6 of Protection of Children from Sexual Offences Act. The learned Additional Public Prosecutor put resistance for suspending of execution of sentence.

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3. The learned counsel for the appellant would submit that neither prosecution has established the age of victim nor her evidence is credible. In this regard, he took me through evidence of PW-3 - victim and PW-5 – Headmaster. The prosecution has tendered school admission form and transfer certificate to establish the date of birth of victim. Admittedly, date of birth is got corrected which required consideration. Moreover, birth certificate has not been produced.

4. It is pointed out that soon after alleged occurrence, victim was taken to the Hospital by her sister, however she never disclosed the incident to either her sister or Medical Officer. The defence took me through evidence of PW-12 – Medical Officer and medical examination report. It is brought to the notice that though within short span from occurrence, victim was medically examined, there were no injury on her person. The evidence of Doctor also discloses FSL report is negative. Certainly this fact requires to be taken into account.

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5. During trial accused was on bail. There are arguable points in the appeal. If the execution of sentence is not suspended then irreversible position would occur as the appeal will take considerable time for disposal. In view of that, case for suspension of execution of sentence is made out.

6. The execution of substantive sentence passed in Special Case No. 260/2016 stands suspended till disposal of appeal on condition of depositing entire fine amount in Trial Court.

7. In the meantime, the appellant – Rahul S/o Babanrao Bhivgade be released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

8. This order be executed only on verification of depositing fine amount.

9. Application stands disposed of.

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10. Sentence as suspended, paper book be prepared.

11. Matter be listed after preparation of paper book.

JUDGE

Gohane.