

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

CRIMINAL APPLICATION (APPA) NO. 124/2020

IN

CRIMINAL APPEAL NO. 44/2020

Hemant Ramprasad Kannake

-VERSUS-

State of Maharashtra, through P.S.O. P.S. Chamorshi, District Gadchiroli.

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

Court's or Judge's Orders

Shri Nachiket G. Moharir, Advocate for the Appellant.
Shri H.R. Dhumale, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 10, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The prayer made on behalf of the appellant/accused is to grant bail after suspending sentence as provided under Section 389(1) of the Criminal Procedure Code. The appellant has been found guilty for the offence punishable under Sections 363, 366-A and 376 of the Indian Penal Code along with Section 6 of the Protection of Children From Sexual Offences Act, 2012. The maximum sentence

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awarded for Section 6 of the Protection of Children from Sexual Offences Act, 2012 is to undergo R.I. for 10 years and total fine is of Rs.20,000/-.

3. Two fold submissions are made. Firstly that during the pendency of trial, the accused was on bail, after conviction he has deposited fine amount and secondly submissions are made on the merits of the case. As against this, learned APP opposed the prayer by filing reply/affidavit. It is submitted that the accused has kidnapped a minor and had a sexual intercourse by taking her at his rented premises. The learned APP would submit that though there is some delay in lodgment of First Information Report, sufficient explanation is furnished in the shape that during meantime father of victim has committed suicide.

4. Section 389 of the Criminal Procedure Code invests power to suspend the execution of sentence and release the convicted person on bail during the pendency of appeal. From bare perusal of the said provision, it is evident that save and except, the matter falling under category of Sub-section 3

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neither their happens to be any principle laid down nor criteria has been fixed for consideration of the prayer for suspension and enlargement of bail. It is a matter of judicial discretion to be exercised befeating to the facts and circumstances of each case. The only requirement is about to record special reasons for suspension meaning thereby there should be certain grounds to uphold the prayer of suspension during the pendency of appeal.

5. In order to justify the prayer for grant of bail during the pendency of appeal, the learned counsel for appellant took me through the evidence. He has particularly criticized medical evidence and pointed out certain deficiencies infirmity about non examination of some material witnesses. On said basis, visualizing that the judgment and conviction of sentence would not sustain, he claims for suspension.

6. Though the learned APP has contested the said prayer on merit, however any categorical opinion expressed by this Court would prejudice the hearing of appeal in one or other way. However, one cannot overlook the broad

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probabilities which arose in the situation.

7. Pertinent to note that the victim was at the verge of majority i.e. 17 year and 2 months of age at the time of occurrence. The prosecution story is that the victim moved with the accused from place to place till she reached to Hyderabad city where the incident took place. Therefore, broadly it can be said that there is no element of force or compulsion, but, victim being minor is a matter for consideration. Apparently it is revealed that though the offence took place on 20.05.2016 and 21.05.2016 and there was immediate disclosure by victim to her father still the First Information Report was filed after quite a long period i.e. 10.07.2016. It is pointed out that the learned Trial Court has misread the evidence and was much influenced by the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 without establishing basic foundational facts. The accused is in jail for near about last 8 month and entire fine amount has been deposited on 04.02.2020. The matter will take its own time for coming up for final adjudication. Therefore, having regard to the totality

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of circumstances, the appellant has made out a case for suspension of sentence and grant of bail.

8. The execution of substantive sentence stands suspended till final disposal of appeal. In the meantime the appellant shall be released on bail on furnishing P.R. Bond of Rs.15,000/- with one surety of like amount. Criminal Application stands disposed of accordingly.

9. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

R.S. Sahare