

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

CRIMINAL APPLICATION (APPA) NO.855/2019

IN

CRI.APPEAL NO.696/2019

Ramesh s/o Ashok Wagh

..vs..

**State of Mah., thr. its Public Prosecutor Buldana for and on behalf of
PSO PS Buldana (City), Tahsil and District Buldana**

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

Court's or Judge's Order

.....
Shri Anil Mardikar, Senior Counsel for the Applicant.
Shri M.J.Khan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : FEBRUARY 5, 2020.

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

2. Heard learned senior counsel Shri Anil Mardikar for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State. Also, perused judgment and order impugned in this appeal and record and proceedings relevant for considering this application.

3. The applicant along with his sister and her husband was prosecuted in Special (POCSO) Case No.7/2018 for offences punishable under Sections 363 and 366 read with Section 34 of the Indian Penal Code and under Section 11(iv) punishable under Section 12 and under Sections 16 and 17 of the Protection of Children from Sexual

Offences Act, 2012. By judgment and order dated 3.5.2019 passed by learned Sessions Judge, Buldana in Special (POCSO) Case No.7/2018, the applicant was convicted for said offences.

For offence under Section 363 of the Indian Penal Code, the applicant was sentenced to suffer RI for 3 years and to pay a fine Rs.5000/- and in default of payment of the fine amount to suffer further RI for 6 months.

For offence under Section 366 of the Indian Penal Code, the applicant was sentenced to suffer RI for 4 years and to pay a fine Rs.10,000/- and in default of payment of the fine amount to suffer further RI for 1 year.

For offence under Section 11(iv) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012, the applicant was sentenced to suffer RI for 1 year and to pay a fine Rs.500/- and in default of payment of the fine amount to suffer further SI for 1 month.

Learned Judge below directed that all sentences shall run concurrently.

4. In this case, age of victim will be having its utmost importance.

5. Learned senior counsel for the applicant, invited my attention to evidence of Rameshwar Sardarsing Rajput (PW7), Junior Clerk of Sawala Gram Panchayat, who issued Birth Certificate (Exhibit 59). As per the said certificate, date of birth of victim is 21.12.2003. Learned senior counsel strenuously urged before me that from cross-examination of

this witness, it is clear that there is a serious doubt about entries made in Exhibit 59. From cross-examination of this witness, it is clear that entry of date of birth of victim was registered on 7.8.2009 which is after a period of 6 years. In cross-examination itself this witness has admitted that for taking entry within one year, after one month, affidavit in presence of Tahsildar or Notary is required and if it is after one year, order of learned Judicial Magistrate First Class is required for that purpose. Nothing that sort is placed on record.

6. In this view of the matter, *prima facie* I am of view that second thought is necessary from this Court to findings recorded by learned Judge of the Court below regarding factum of age.

7. The applicant was on bail during the trial as it could be seen from certified copy of the impugned judgment. It is not the case of the prosecution case that when he was on bail he misused the liberty granted to him in his favour. Looking to age of the applicant, he will be available to course of justice. In this view of the matter, I pass following order:

ORDER

(1) The criminal application is allowed.

(2) The substantive jail sentence imposed upon the applicant, by judgment and order dated 3.5.2019 passed by learned Sessions Judge, Buldana in Special (POCSO) Case No.7/2018, shall stand suspended during the pendency of

the present appeal.

(3) The applicant shall be released on bail on he executing a P.R.Bond, before learned Judge below, in the sum of Rs.15,000/- with one solvent surety of the like amount.

(4) Learned Judge of the Court below before whom the Bail Bonds will be executed shall not issue warrant of release unless and until entire fine amount is deposited in the Court.

(5) After release from jail, the applicant is directed to attend Buldana (City) Police Station, Buldana once in a 6 month during the pendency of this appeal.

(6) The applicant shall personally remain present before this Court at the time of final hearing of this appeal.

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

...../-