

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

CRIMINAL APPLICATION (APPA) NO.1009/2019

IN

CRIMINAL APPEAL NO.769/2019

Sachin Vijayrao Raut

..vs..

State of Mah., thr. PSO PS Alipur, Taluka Hinganghat, District Wardha

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

Court's or Judge's Order

.....
Shri M.V.Rai, Counsel for the Applicant.

Shri N.R.Rode, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : JANUARY 06, 2020.

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

2. Heard learned counsel Shri M.V.Rai for the applicant and learned Additional Public Prosecutor Shri N.R.Rode for the State.

3. By judgment and order of conviction, impugned in the appeal, dated 9.10.2019 passed by learned Additional Sessions Judge, Hinganghat in Special (Ch.) Case No.18/2017, the applicant stands convicted for offences punishable under Section 376(2)(i) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012. For offence punishable under

.....2/-

Section 376(2)(i) of the Indian Penal Code, the applicant was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.2000/- and in default of payment of the fine amount to suffer rigorous imprisonment for 1 month. No separate sentence was awarded for offence under Section 4 of the POCSO.

4. This appeal challenging the judgment and order of conviction was admitted by this Court on 27.11.2019 and consideration of this application was deferred, till receipt of record and proceedings. Now, record and proceedings are received and the said are placed on record.

5. It is submission of learned counsel Shri M.V.Rai for the applicant that learned Judge of the Court below has completely missed aspect that baby boy which was delivered by victim was not born through the applicant.

6. From submissions made by learned counsel Shri M.V.Rai for the applicant and learned Additional Public Prosecutor Shri N.R.Rode for the State on the basis of report lodged by victim, two different offences were registered; one was registered against the present applicant and another was registered against Sushil Thool. It is revealed to this Court that sessions case filed against Sushil Thool is still pending. According to the prosecution, victim delivered a baby in view of atrocities committed on her by the applicant. It was specific case of the applicant before learned Judge of the Court below that the applicant is not father of baby delivered

by victim, but Sushil Thool is putative father and since they were in love with other, in order to save his skin, the applicant is falsely implicated.

7. Learned counsel Shri M.V.Rai for the applicant, invited my attention to paragraph No.24 of the judgment and order impugned in the appeal to point out that it was specifically contended at the time of trial by defence counsel that DNA Report clearly absolves the applicant since in the DNA Report it was found that Sushil Thool is putative father, however according to learned counsel for the applicant, the said was not considered at all.

8. Perusal of the judgment and order impugned in the appeal shows that though in paragraph No.24, learned counsel for defence has specifically agitated that he is being falsely implicated and his submission is substantiated by the DNA Report, which clearly shows that Sushil Thool is putative father of baby delivered by victim, is not given thoughtful consideration nor it is considered at all and in spite of availability of clinching scientific evidence, on oral version of victim, the applicant was convicted. There cannot be any doubt that if version of victim is found to be trustworthy, the said alone can be basis for conviction. However, though it was case of the victim that she remained pregnant through the applicant, the said is clearly belied by scientific evidence and, in my view, learned Judge of the Court below ought to have considered the said aspect

appropriately. Though the DNA Report is available on record, the said was not exhibited, however the prosecution is not denying the said DNA Report and in view of clause (4) of Section 293 of the Code of Criminal Procedure, the report given by scientific expert is admissible in evidence.

9. The applicant was on bail during the trial.

10. In this view of the matter, I pass following order:

ORDER

(i) The criminal application is allowed.

(ii) The substantive jail sentence imposed upon the applicant by judgment and order of conviction, impugned in the appeal, dated 9.10.2019 passed by learned Additional Sessions Judge, Hinganghat in Special (Ch.) Case No.18/2017 shall stand suspended during the pendency of the present appeal.

(iii) The applicant be released on bail on he executing a P.R.Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

(iv) The applicant is directed to attend Alipur Police Station, Taluka Hinganghat, District Wardha once in 6 month during the pendency of the appeal.

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

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

...../-