

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

CRIMINAL APPLICATION (APPA) NO.1015/2019

IN

CRIMINAL APPEAL NO.627/2019

Diwakar s/o Eknaath Dhudase

..VS..

State of Mah., thr. PSO PS Gadchiroli, Tahsil and District Gadchiroli

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

Court's or Judge's Order

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Ms K.Deshpande, Counsel for the Applicant.
Shri M.J.Khan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : JANUARY 13, 2020.

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

2. By judgment and order of conviction, impugned in this appeal, dated 23.8.2019 passed by learned Sessions Judge, Gadchiroli in Sessions Case No.61/2016, the applicant was convicted for offence punishable under Section 376(L) of the Indian Penal Code and for that he was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine Rs.10,000/- and in default of payment of the fine amount to suffer further rigorous imprisonment for 6 months.

3. On 28.11.2019, this appeal was admitted and consideration of this application was deferred, till receipt of

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record and proceedings. Now, record and proceedings are received and placed on record.

4. Heard learned counsel Ms K.Deshpande for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State. With their able assistance, I have gone through evidence relevant for decision of this application.

5. Victim is PW2. She is deaf and dumb. Her age at the relevant time was 36 years. According to her evidence, it is only the applicant who was doing sex to her daily. After registration of the crime, victim was referred for her medical examination. Dr.Pravin Kilnake (PW5), examined her medically. Evidence of the said doctor shows that victim was sexually assaulted forcefully for 5 times. On clinical examination, he found that she was 16-18 weeks pregnant. Evidence of the said doctor shows that on 18.12.2016 she was admitted for termination of pregnancy and accordingly the said was done. Fetus was preserved for DNA Test. The said was sent for its examination and DNA Report of the same is at Exhibit 13. The DNA Report shows that the applicant is excluded to be biological father of the fetus of victim. Learned Judge of the Court below has very cursorily considered this aspect and has not given required importance to the scientific evidence.

6. After perusing the judgment and order of conviction impugned in this appeal, I am of opinion that second thought is necessary. The judgment and order of

conviction shows that the applicant was on bail during Trial and at no point of time he misused the liberty granted to him in his favour.

7. 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 of conviction, impugned in this appeal, dated 23.8.2019 passed by learned Sessions Judge, Gadchiroli in Sessions Case No.61/2016, shall stand suspended during pendency of the present appeal.

(3) Applicant-Diwakar s/o Eknaath Dhudase, shall be released on bail on he executing a P.R.Bond in the sum of Rs.10,000/- with one solvent surety of the like amount.

(4) The applicant is directed to attend Gadchiroli Police Station, Tahsil and District Gadchiroli, once in 6 months during pendency of the present appeal.

(5) Before issuing release warrant, learned

Judge of Court below shall ensure that fine amount is paid by the applicant, if not paid earlier.

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

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