

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

CRIMINAL APPLICATION (APPA) NO.1041/2019
IN CRIMINAL APPEAL NO.796/2019

Bandu Sugu Gedam .vs. State of Maharashtra, through PSO P.S. Jivti, Tq.
Korpana, Dist. Gadchiroli

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

Court's or Judge's orders.

Miss S. D. Wankhede, Advocate for applicant.
Mr. N. B. Jawade, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : FEBRUARY 14, 2020

Heard Miss Wankhede, learned counsel for applicant and Mr. Jawade, learned A.P.P. for non applicant-State.

This is an application for suspension of substantive jail sentence and for grant of bail. Learned Additional Sessions Judge, Chandrapur on 19.12.2017 in Sessions Case No.75/2012 convicted the applicant for an offence punishable under Section 376 of the Indian Penal Code and directed him to suffer rigorous imprisonment for ten years and to pay a fine amount of Rs.50,000/-, in default to suffer rigorous imprisonment for six months. For an offence punishable under Section 417 of the IPC, he is also directed to suffer rigorous imprisonment for one year and to pay a fine amount of Rs.10,000/-, in default to suffer rigorous imprisonment for one month. For an offence punishable under Section 506 of the IPC, the applicant is directed to suffer rigorous imprisonment for one year and to

pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for one month.

The date of incident is prior to 6 to 7 months of lodging of the first information report. It was lodged by the victim herself on 20.01.2012. The oral report is at Exh.-16. To determine her age, Ossification Test was also conducted and Dr. Ashok (PW9), who conducted the said test, issued certificate (Exh.-41), which shows that the age of the victim was more than 17 years but less than 19 years.

Looking to the nature of evidence of victim along with report, possibility of the victim being a consenting party is not completely ruled out. The offence is of the year 2012 i.e. prior to amendment in the Indian Penal Code.

The applicant was on bail during trial and at no point of time, he has misused the liberty granted to him.

In that view of the matter, when the Court was about to grant bail, learned counsel for the applicant would submit that it will not be possible for the applicant to deposit the fine amount of Rs.70,000/- as directed to be paid by the applicant, in view of the fact that the applicant is a poor person and is a labour. From the arrest panchanama (Exh.-66) it is also clear that he is educated up to only 11th standard. In my view, therefore, it will be a futile exercise, if he is released on bail with a condition to deposit the entire fine amount.

In that view of the matter, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Substantive jail sentence imposed upon the applicant by learned Additional Sessions Judge, Chandrapur in Sessions Case No.75/2012, shall remain suspended during the pendency of the present appeal.
- (iii) Applicant-Bandu Sugu Gedam be released on bail on he executing P.R. Bond in the sum of Rs.5,000/- with one solvent surety in the like amount.
- (iv) In view of poor financial condition of applicant, it is directed that the applicant shall deposit fine amount of Rs.25,000/- only. Learned Judge of the Court below shall allow execution of the bail bonds of the applicant only after fine amount of Rs.25,000/- is deposited by the applicant.
- (v) The applicant is directed to attend Police Station, Jivti, Tq. Korpana, Dist. Chandrapur once in six months, during the pendency of this appeal.
- (vi) The applicant is directed to remain personally present before this Court at the time of final hearing of this appeal.

The application is disposed of.

JUDGE