

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

CRIMINAL APPLICATION (APPA) NO. 110/2021 IN
CRIMINAL APPEAL NO. 190/2021

Sunil S/o Maroti Chimurkar

VERSUS

State of Maharashtra

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

Court's or Judge's Orders

Shri A. C. Jaltare, Advocate for applicant/appellant.
Shri A. Damle APP for non-applicant/respondent.

CORAM : VINAY JOSHI, J.

DATE : 11.08. 2021.

Heard.

2. This is an application seeking suspension of execution of sentence in terms of Section 389(1) of the Code of Criminal Procedure. The applicant/accused was charged for the offence punishable under sections 376(f) and 323 of the Indian Penal Code. The learned Trial Court held that the prosecution has proved both charged offences and ultimately sentenced him to undergo rigorous imprisonment for 10 years along with fine of Rs. 5,000/- for the offence punishable under Section 376(f) of the Indian Penal Code and to undergo rigorous imprisonment for 1 year along with

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fine of Rs. 1000/- for the offence punishable under Section 323 of the Indian Penal Code. Both sentences are directed to run concurrently.

3. Learned counsel for the applicant would submit that during the pendency of trial, applicant was on bail and he undertakes to deposit fine within short period. It is further submitted that the appellant is in jail from last two years. On merits, the learned counsel for the applicant submitted that the evidence of prosecutrix who was major, does not inspire confidence. The medical evidence does not support the prosecution case. Moreover, semen stains were not found on the clothes of victim on chemical analysis. The State resisted for suspension by filing reply. It is contended that the accused has committed offence of serious nature which is duly proved in the Trial Court. According to the State, there is no difficulty in basing conviction on the sole testimony of prosecutrix. Moreover, it is pointed that soon after the occurrence, First Information Report (FIR) has been lodged immediately.

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4. With the assistance of both learned counsel appearing for parties, I have gone through the impugned judgment and entire record.

5. The prosecution has examined in all seven witnesses to establish the guilt. The entire thrust of the prosecution was on the PW-1 Victim who has narrated about forcible sexual intercourse. Learned counsel for the defence also took me through the cross-examination of victim to impress that her version is not probable. Particularly, I have gone through the evidence of PW-2 Doctor along with medico legal certificate at Exh. 15. It reveals that within 13 hours from the occurrence, victim girl aged 19 years was examined. Medical Officer deposed that there were no injury on her body nor injuries on her genital part. However, Doctor has opined that possibility of sexual violence cannot be ruled out. Particularly, medico legal report bares history only about attempt.

5. Having regard to all these facts, the applicant has arguable case on merits. Fixed term of imprisonment has been awarded. The accused is

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already in jail for the period of two years. Appeal would take considerable time for hearing. In view of that, the applicant has made out a case to exercise judicial discretion to suspend execution of sentence, hence following order:-

(I) Applications stands allowed and disposed of.

(II) Execution and implementation of substantive sentence passed in Sessions Case no. 126/2018 is hereby suspended till final disposal of appeal. In the meantime, the applicant – Sunil S/o Maroti Chimurkar is released on bail on his furnishing P. R. Bond of Rs. 25,000/- with one surety in the like amount.

(III) The applicant shall deposit entire fine amount in the Trial Court within a period of two weeks from his release, failing which the State can move this Court for recall of this order.

JUDGE

Gohane.