

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

CRIMINAL APPLICATION (APPA) NO.234 OF 2021

IN
CRIMINAL APPEAL NO. 151 OF 2021

Shankar s/o Rajan Bhondekar

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri Parag Ukey, Advocate for Applicant.
Mrs. S.S. Jachak, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 05/04/2021

Hearing was conducted through Video
Conferencing.

2. Heard.

The Applicant/Accused was convicted in Special POCSO Case No.54 of 2017 by Special Judge vide its judgment and order dated 09.02.2021 for the offence punishable under Sections 452, 354 of the Indian Penal Code and Section 7 read with 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The maximum sentence imposed by the Trial Court is to under go rigorous imprisonment for four years for the offence punishable under Section 452 of the Indian Penal Code and Section 8 of The POCSO Act with direction to run both sentence concurrently. Besides that total fine of Rs.8,000/- has been imposed with default clause. The Applicant is seeking for suspension of execution of sentence till disposal of appeal.

3. Learned Counsel for the applicant would submit that at the time of occurrence, the victim was major and therefore, the provision of POCSO Act would not attract. In this regard, he took me through the portion of the evidence of victim's mother. Besides that he has pointed out certain portion of cross-examination of the victim to impress that the incident was after-thought. Moreover, he submit that, there was considerable delay in lodgment of F.I.R.. Precisely, he endeavored to show that the applicant has fair chances to succeed in the appeal and therefore, he deserve for suspension. Learned A.P.P. has resisted this application by contending that after full fledged trial, the Special Court has recorded the finding of guilt.

4. The Applicant/Accused is punished with fixed term of imprisonment. Admittedly, during pendency of trial, he was on bail. Unless, there exists exceptional circumstance, execution of sentence can be suspended when the substantive sentence does not run for longer period. The appeal will take its own time for disposal in accordance with law. If, during meantime, the Applicant is kept in jail, then irreversible position may occur, in case he success in appeal. Having regard to all these facts, following order is passed :

- (a) The Criminal Application stands allowed.
- (b) The Execution and implementation of substantive sentence passed in Special POCSO Case No. 54 of 2017 by Additional Sessions Judge, Gondia is hereby suspended till disposal of appeal on condition that, the Applicant/Accused shall deposit entire fine amount within two weeks from

today.

(c) In the meantime, (i.e. after deposit of fine amount) the Applicant/Accused shall be released on bail on his furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

(d) The Trial Court shall ensure to execute this order i.e. to issue released order only after verifying that the entire fine amount has been deposited.

5. Criminal Application stands disposed of accordingly.

JUDGE

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