

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

CRIMINAL APPLICATION [APPA] NO. 442 OF 2021
IN CRIMINAL APPEAL NO. 327/2021.

Dhruwa @ Shahrukh Munna Sheikh.

-Versus-

The State of Maharashtra, through P.O. Ballarshah, District Chandrapur.

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

Court's or Judge's orders

Shri A.R. Fule, Advocate for the Applicant/Appellant.

Shri S.D. Sirpurkar, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 20, 2021.

Heard.

2. This is an application seeking suspension of execution of substantive sentence passed in Special Atrocity Case No.18/2017, vide judgment and order dated 09.06.2020. The appellant/accused is held guilty for the offence punishable under Sections 376[2][m], 323 and 506-II of the Indian Penal Code. The trial Court has imposed sentence on the appellant to undergo rigorous imprisonment for 10 years along with fine for the offence punishable under Section 376[2][m] of the Indian Penal Code, and other punishment for rest of the offences.

3. The learned Counsel for the applicant/appellant has primely submitted that despite cogent evidence, the trial Court has convicted the appellant solely on the basis of statement of the victim. He would submit that the appellant came to be arrested on 30.08.2017, and since then he is in jail. Precisely it is his submission that the appellant has already undergone imprisonment for 4 years, and there are no chances of this appeal coming for hearing in near future.

4. The State has objected this application by contending that the trial Court has rightly appreciated the evidence. It is submitted that the victim's evidence is supported by medical evidence. Moreover, the learned A.P.P. contended that in the year 2015, the appellant was convicted for the offence of kidnapping. Having regard to these facts, suspension is opposed.

5. With the assistance of both sides, I have gone through the evidence recorded by the trial Court. The victim was admittedly major and was of 20 years of age at the time of occurrence. It is her case that on 18.08.2017, at around 10 a.m. while she was on

public road waiting for her sisters, the accused came there, forcibly lifted her, took her in one dilapidated house and had forcible intercourse. She also stated that the accused hit her at her right leg with the help of a tile and did the things.

6. The learned Counsel for the appellant would submit that the incident as stated is impossible, since it was a day time and occurrence is stated to be on public road. Moreover, the learned counsel for the appellant took me through the medical evidence wherein the Doctor has opined that though hymen was ruptured, it was not fresh. My attention was invited to the statement of Doctor, who states that there was no external injury on the person of the victim. Moreover, I have gone through the evidence of rest of witnesses. Having regard to these submissions, the matter requires re-appreciation of entire material. Already the appellant/applicant is in jail for a period of more than 4 years. In case the appeal is allowed, there would be no reversal of the punishment which he has already undergone. The learned counsel for the applicant/appellant submitted that entire fine amount is deposited in the trial Court.

Having regard to these facts, the applicant/appellant has made out a case for suspension of sentence. Hence, the following order.

- (i) Criminal Application is allowed and disposed of.
- (ii) The execution of substantive sentence passed in Special Atrocity Case No.18/2017 by the Additional Sessions Judge, Chandrapur dated 09.06.2020 stands suspended till the final disposal of the appeal.
- (iii) In the meanwhile, the applicant/appellant shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one surety in the like amount.
- (iv) The trial Court shall ensure deposit of the entire fine amount before issuing release order.

JUDGE

Rgd.