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

CRIMINAL APPLICATION (APPA) NO. 511 OF 2021

IN

CRIMINAL APPEAL NO.374 OF 2021

Anurao s/o Vasanta Atram

-VERSUS-

The State of Maharashtra, through P.S.O. P.S. Moregaon, District Yavatmal.

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

Court's or Judge's Orders

Shri S.M. Lodha, Advocate for applicant.

Shri S.D. Sirpurkar, A.P.P. for respondent/State.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 22, 2021.

Heard.

2. This is an application seeking suspension of execution of sentence passed in Special (POCSO) Case No.19/2018 whereby the applicant/accused was convicted by the Trial Court for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for five years along with fine of Rs.10,000/-.

3. The applicant's learned Counsel has agitated various grounds on merits contending that the trial Court had erroneously held accused guilty despite sufficient evidence. The State resisted bail by making submission.

4. With assistance of both sides, I have gone through the evidence recorded in trial Court along with documents proved during the course of trial. It is the case of sexual assault on victim girl aged four years.

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The applicant's learned Counsel would submit that the conviction is based solely on the hearsay evidence. In this regard, it is argued that neither victim nor her elder sister who was present at the time of occurrence was examined. The evidence of parents is of hearsay nature. Besides that it is pointed out from medical evidence that no external injuries were found on the person of victim except two scratches. I have taken through Chemical Analyzer's report which does not assist the prosecution. Moreover, by taking through the evidence it is argued that execution of spot panchanama and seizure of articles is also suspicious. Lastly it is canvassed that the applicant is in jail from 18/07/2018 i.e. for the period of three and half year out of total imprisonment of five years. Having regard to above submissions, the appellant has made out an arguable case on merits. Besides that already more than half of the sentence has been undergone by appellant. In case of success in appeal, the position of under trial period would become irreversible. The appellant has already paid entire fine amount on 14/09/2021.

5. In view of that execution of substantive substance passed by Special Judge, Kelapur, District Yavatmal dated 18/08/2021 in Special (POCSO) Case No.19/2018 is suspended till final disposal of appeal.

6. In the meantime, appellant shall be released on bail on his furnishing P.R. Bond of Rs.25,000/-, with one surety in the like amount.