

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPA) NO.524 OF 2021
IN
CRIMINAL APPEAL NO.379 OF 2021

Sagar s/o Dipak Labde .vs.. State of Maharashtra, thr. P.S.O. P.S. Akot, Distt. Akola.

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

Court's or Judge's orders

Shri A.S. Londhe, Advocate for applicant.
Shri V.A. Thakre, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 13/12/2021

This is an application seeking suspension of execution of sentence passed in Special (POCSO) Case No.22 of 2018, whereby the applicant(accused) was convicted for the offence punishable under Section 376(3) read with Section 511 of the Indian Penal Code and Sections 3, 4 read with Section 18 of the Protection of Children from Sexual Offences Act, 2012. The trial Court has sentenced the applicant for the offence punishable under Section 376(3) read with Section 511 of the Indian Penal Code, to undergo rigorous imprisonment for ten years along with fine of Rs.15,000/- with default clause. Precisely, the trial Court convicted accused for the offence of attempt to commit rape and passed aforementioned sentence.

2. The applicant's learned Counsel took me through impugned judgment and evidence recorded during the trial. He has shown certain inconsistencies and improbabilities occurred during evidence. It is stated that sole testimony of victim, does not inspire

confidence. On the other hand, State resisted this application by filing reply affidavit. It is contended that the victim was 12 years of old at the time of occurrence and offence is of serious nature.

3. It is victim's evidence that at the relevant time, the applicant entered into her house, forcibly removed her clothes and had sexual intercourse. However, at that time, the applicant thought that somebody has come, hence, he pushed her and ran away. It is argued that though the occurrence took place in the afternoon in the thick locality, there is no corroborative evidence. The applicant's learned Counsel took me through the evidence of P.W.7- Medical Officer which shows that there were no injuries over the genital area nor hymn was torn. It is submitted that the police have not seized clothes nor the Chemical Analyzer Report supports the victim's case. In view of above circumstances, the applicant has made out an arguable case on merits. Besides that the applicant is 20 years of age and is in jail from 15/06/2018 i.e. for the period of more than 3 years and 6 months.

4. The appeal will take its own time for its disposal. Having regard to the fact that the applicant is convicted for an attempt and already he is in jail for considerable period, I deem it fit to suspend the execution of sentence. In view of that execution of substantive sentence passed in Special (POCSO) Case

No.22 of 2018 by the Additional Sessions Judge, Akot, District Akola is hereby suspended till final disposal of appeal.

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

6. Release of applicant shall be subject to payment of entire fine amount.

7. The Trial Court shall ensure about deposit of fine amount before issuing release order.

8. Application stands disposed in above terms.

JUDGE

R.S. Sahare