

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 616 OF 2019

IN

CRIMINAL APPEAL (APEAL) NO. 470 OF 2019

(Harishchandra Sitaram Khanorkar...VS..State of Maharashtra, Thr. PSO PS Hudkeshwar, Nagpur)

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

Court's or Judge's orders

Shri C.S.Dhore, Advocate for Appellant.
Shri T.A.Mirza, A.P.P. for Respondent/State.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : APRIL 20, 2021.

This is an application under Section 389(1) of the Code of Criminal Procedure filed by the appellant. The appellant is convicted for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 376(2)(f)(j)(i)(n) of the Indian Penal Code, 1860 and is directed to suffer imprisonment for life.

On careful consideration of impugned judgment, it appears that the appellant is maternal uncle of the victim. From the findings recorded by the learned Judge, it appears that the victim was pregnant and has delivered a child. It is also undisputed fact that the victim was living with the appellant. Though the appellant is disputing age of the victim, but the fact that the appellant is aged about 55 years is not disputed. Since the age of the appellant and the relationship of the appellant with the victim is not disputed, considering the facts that the victim was in the custody of the appellant and became pregnant, we are not inclined to suspend the sentence imposed by the learned Trial Judge. Though the appellant was on bail during the Trial, due to

conviction recorded by the learned Trial Judge, the presumption of innocence which was in favour of the appellant during Trial has been extinguished and the appellant is not entitled to said presumption. The appellant has not led any evidence to rebut the presumption under Sections 29 and 30 of the Protection of Children From Sexual Offences Act, 2012.

We therefore find no merit in the application, the Criminal Application is **dismissed**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)

Namrata