

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

CRIMINAL APPLICATION (APPA) NO. 584/2021 IN
CRIMINAL APPEAL NO. 419/2021

(Ab Nasir @ Sagar Abdul Rashid Vs. State of Maharashtra)

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

Court's or Judge's orders

Shri M. N. Ali, Advocate for applicant.
Shri S. D. Sirpurkar, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 02.12.2021.

Heard

2. This is an application seeking suspension of execution of sentence passed in Spl. (POCSO) Case No. 158/2018 by the learned Sessions Judge, Amravati, whereby the applicant/appellant was convicted for offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). The Trial Court has imposed maximum sentence to suffer rigorous imprisonment for 10 years along with fine of Rs. 3,000/- with default clause. Though different term of imprisonment is awarded, under each count, all sentences were directed to run concurrently.

3. The State resisted this application by filing reply-affidavit. It is contended that the offence is of serious nature. The Trial Court has appropriately appreciated evidence which is based on record.

4. With the assistance of both sides, I have gone through the impugned judgment and the evidence recorded by the Trial Court. Though five accused were tried, however the Trial Court acquitted the rest and convicted the applicant (accused No.1) for aforesaid offence. Particularly, I have gone through the evidence of victim aged 17 years. Since the victim has not supported the prosecution case, learned APP by taking permission of the Court, put her question in the nature of cross-examination which is generally called as a 'hostile'. The entire evidence of victim shows that she gave inconsistent answers to both sides. Somewhere, she says that one Sagar subjected her sexual assault whilst sometime, she denied. The applicant has pointed from her evidence that the victim stated that so-called Sagar's full name is Sagar Wankhede. The applicant's name is Ab. Nasir @ Sagar Abdul Rashid. The evidence of victim specifically states that so-called accused Sagar is not present before the Court. Therefore, the question of identity of rapist prominently emerges.

5. Perusal of impugned judgment indicates that most of the conclusions are drawn on the basis that there was no such specific cross-examination by accused. D.N.A. report does not relate to existing applicant. Having regard to these facts, certainly, the applicant has made out arguable case of merits.

6. During trial, the applicant was on bail. The appeal will take considerable time for its disposal. If the applicant succeeds in appeal then irreversible position may occur about his pre-trial detention. Considering the nature

of evidence of victim and Medical Officer, I deem it appropriate to suspend the execution of sentence. In view of that following order:-

- (I) The criminal application stands allowed and disposed of.
- (II) The execution of substantive sentence passed in Spl. (POCSO) Case No. 158/2018 by the learned Sessions Judge, Amravati, vide order dated 24.08.2021 stands suspended till final disposal of appeal.
- (III) In the meantime, the applicant – Ab Nasir @ Sagar Abdul Rashi be released on bail on his furnishing P. R. bond of Rs. 25,000/- with one surety in the like amount.

JUDGE

Gohane