

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

Criminal Application [APPA] No.590 of 2021
in Criminal Appeal No.422 of 2021

Ashish s/o Rupchand Chakole

vs.

State of Maharashtra, through P.S.O. Mohadi, District Bhandara

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

Court's or Judge's Orders

*Shri K.S. Motwani, Advocate for the Applicant/Appellant.
 Shri S.D. Sirpurkar, A.P.P. for the Non-Applicant/Respondent.*

CORAM : VINAY JOSHI, J.
DATE : 1st DECEMBER, 2021.

This is an application seeking suspension of execution of substantive sentence passed in Special (POCSO) Case No.21/2019, in which the applicant-accused was convicted for the offence punishable under Section 376(3) of the Indian Penal Code and under Section 4 read with Section 6 of the Protection of Children from Sexual Offences Act, 2021. The trial Court has imposed sentence to undergo rigorous imprisonment for 10 years along with fine of Rs.2,000/-.

02] It is argued that the trial Court manifestly erred in concluding that the prosecution has duly established the alleged offence. With the assistance of both sides, I have gone through the impugned judgment, recorded evidence and documents tendered during trial. It was pointed out from the evidence of PW-2 victim that there was love affair in between the victim and the accused. Both of them ran away and stayed away from their house for eight days. The applicant's learned Counsel would submit that it is a case of consensual sex. He added that since the prosecution has failed to establish that the victim was minor at the time of occurrence, therefore, offence was not proved.

03] On the other hand, the learned A.P.P. strongly opposed this application by pointing towards seriousness of the offence. It is submitted that the prosecution has examined in all twelve witnesses to establish the occurrence. He took me through the evidence of the victim and Medical Officer to impress that there is a specific evidence about sexual assault. Besides that, the learned A.P.P. took me through the evidence of DNA Profile Report. It was pointed out that the applicant and the victim were found to be biological parents of the samples collected from the fetus. Moreover, he would submit that the Birth Certificate is produced to establish the age.

04] The applicant's learned Counsel strongly assailed on the age proof of the victim. He took me through the victim's evidence, where she admitted that her birth place is General Hospital, Bhandara, whilst the Birth Certificate appears to be issued by the Nagar-Panchayat, Mohadi. Then, he took me through the victim's admission that her naming ceremony was after one month from the birth, whilst though birth entry was taken within two days, her name appears in the Birth Certificate. Besides that, it is submitted that the person, at whose instance the birth entry was taken, is neither examined nor mentioned in the Birth Certificate. It is pointed out that the column of place of birth is kept blank in the Birth Certificate. Having regard to these submissions supported by the record, the applicant has made out an arguable case on merits.

05] During trial, the applicant was on bail. The appeal will take considerable time for disposal. If the applicant/appellant succeeds in appeal, then irreversible position would occur about pre-trial detention. Having regard to the above circumstances, the

execution of substantive sentence passed in Special [POCSO] Case No.21/2019 by the learned Special Judge, Bhandara, vide judgment and order dated 29/09/2021 stands suspended till final disposal of the appeal. In the meantime, applicant-Ashish Rupchand Chakole shall be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with surety of the like amount.

06] The application stands allowed and disposed of accordingly.

**sandesh*

JUDGE