

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

CRIMINAL APPLICATION [APPA] NO. 610/2021.

Suraj Vijay Sahare.

-Versus-

State of Maharashtra through P.O. Nandanwan, Nagpur.

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

Court's or Judge's orders

Shri N.S. Giripunje, Advocate for the Applicant.
Shri I.J. Damle, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 27, 2021

Heard.

2. Applicant is seeking condonation of delay of 780 days caused in preferring Appeal to challenge the order of conviction passed by the Additional Sessions Judge, Nagpur in Special POCSO Case No.145/2018 vide judgment and order dated 18.06.2019. The reason canvassed for delay is applicants' ignorance about statutory remedy of filing an appeal. Moreover, it is argued that the applicant went to Mumbai for livelihood and therefore, he was not in a position to take assiduous steps.

3. The applicant was convicted by the trial

Court vide judgment and order dated 18.06.2019. The applicant is on bail due to suspension order obtained from the convicting Court in terms of Section 389[3] of the Code of Criminal Procedure. The trial Court is empowered to suspend the execution of sentence only to the extent of period of limitation and not thereafter. Apparently, the order of suspension would come to an end after appeal period is over, however, still for near about 2 years, the applicant/appellant has not filed appeal, nor got any order of suspension from this Court.

4. Be that as it may, the trial Court held the applicant guilty for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act and Section 506 of the Indian Penal Code. The applicant was directed to suffer rigorous imprisonment for one year along with total fine of Rs.2000/-. The appellant has a statutory right to challenge the order of conviction in an appeal. Technicalities like point of limitation cannot be allowed to prevail, vis-a-vis the right to liberty. The delay can be condoned by imposing some costs, since the applicant has enjoyed the liberty without getting

the suspension of sentence. Hence, the following order.

- (i) Criminal Application is allowed and disposed of.
- (ii) The delay caused in filing appeal is condoned, subject to the applicant /appellant depositing an amount of Rs.10,000/- as costs with the High Court Legal Services Sub Committee, Nagpur by 18.11.2021.
- (iii) Office to Register the appeal.

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Criminal Appeal No. _____/2021.

Heard.

Admit. Call for R & P.

Learned A.P.P. waives notice for the respondent.

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Criminal Application No. _____/2021.

Heard.

2. The appellant/applicant is convicted and sentenced to suffer rigorous imprisonment for one year along with total fine of Rs.2000/-. It is stated that the fine amount is already deposited. The appeal

will take its own time for hearing. Having regard to the fixed term of sentence of one year, following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The execution of substantive sentence imposed by the Additional Sessions Judge, Nagpur in Special POCSO Case No.145/2018/ vide judgment and order dated 18.06.2019, is hereby suspended till the final disposal of the appeal.
- (iii) In the meanwhile, the appellant/applicant shall be released on bail on same terms and conditions as are imposed by the trial Court.
- (iv) If the appellant/applicant fails to deposit the amount of costs as ordered by this Court, the prosecution would be at liberty to move this Court seeking recalling of suspension order.

JUDGE

Rgd.