

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

CRIMINAL APPLICATION (APPA) NO.615 OF 2021 IN
CRIMINAL APPEAL NO.448 OF 2021

Umesh S/o Bhushan Pandhare ..vs.. State of Maharashtra, thr. P.S.O. P.S. Koradi, Nagpur.

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

Court's or Judge's orders

Shri R.M. Patwardhan, Advocate for applicant.
Shri S.D. Sirpurkar, 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.101 of 2019 whereby the applicant was convicted for the offence punishable under Sections 363, 376 (2) (n) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012. The trial Court has imposed maximum sentence to suffer rigorous imprisonment for ten years along with total fine of Rs.4000/- with default clause. The State resisted this application by filing reply affidavit. The State has contended about the nature of evidence and seriousness of the offence.

2. With the assistance of both sides, I have gone through the impugned judgment and evidence recorded during the trial. Victim aged 15 years gave evidence that she was desiring to marry with the applicant hence they went to the temple however, due to her underage, they did not marry. According to the victim, thereafter both of them went at a relative's house where they had a repeated sexual relationship. The applicant's learned Counsel would submit that it is a case of love affair, however, there was no sexual relation in between them. Both sides conceded that since the

victim denied for medical examination, there is no supporting medical evidence. Moreover, it is submitted that Chemical Analyzer's Report does not support the prosecution case. Besides that some inconsistencies and improbabilities are pointed out.

3. Prima facie it reveals that there was love affair in between them. The victim's statement is not supported by medical evidence. Though medical evidence is not a must, however an arguable case has been made out on merits. During trial, applicant was on bail. The appeal will take its own time for disposal. Having regard to this fact, execution of substantive sentence passed in Special (POCSO) Case No. 101 of 2019 by the District judge-1 & Additional Sessions Judge, Spl. Court (POCSO), Nagpur is hereby suspended till final disposal of appeal.

4. 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.

5. The release of applicant shall be subject to payment of entire fine amount.

6. The trial Court shall ensure deposit of fine amount before issuing release order.

7. Application stands disposed of in above terms.

JUDGE

R.S. Sahare