

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

CRIMINAL APPLICATION (APPA) NO.731 OF 2021
IN
CRIMINAL APPEAL NO.549 OF 2021

Padmakar Ramrao Ingle ..vs.. State of Maharashtra, thr. P.S.O. P.S. Khadan, Akola, Dist. Akola.

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

Court's or Judge's orders

Shri Anil Mardikar, Senior Advocate, with Shri V.R. Deshpande,
Advocate for appellant/applicant.
Shri V.A. Thakre, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 17/12/2021

Heard.

2. This is an application seeking suspension of execution of the substantive sentence passed in Session Trial No.30 of 2018 whereby the appellant (accused) was convicted for the offence punishable under Section 354-A of the Indian Penal Code and Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act. The Trial Court has sentenced the appellant to undergo rigorous imprisonment for three years along with fine of Rs.10,000/- for the offence punishable under Section 354-A of the Indian Penal Code, whilst directed to suffer rigorous imprisonment for five years with fine of Rs.20,000/- for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act. Both sentences were directed to run concurrently.

3. It is the prosecution case that accused and minor victim were residing in the same apartment. On the date of occurrence, while accused and victim were in the lift, he had embraced and kissed her, therefore the report.

4. The appellant's learned Counsel would submit that the prosecution was not able to establish alleged offence with requisite standard of proof. It is argued that the testimony of victim is not reliable. Though victim's younger sister was present at the time of occurrence, however, she was not examined. It is brought to the notice that as per the prosecution case, CCTV Footage was available but it was not collected and tendered in the form of evidence. It is argued that the incident itself is doubtful since defence witness i.e. watchman of the lift has stated a different story. Moreover, it is submitted that as per defence, there was a dispute on account of bursting crackers and that may be the reason for false implication. The applicant's learned Counsel also disputed the age of minor by showing the discrepancies in the related evidence on the point of birth date.

5. On the other hand, learned Additional Public Prosecutor in resistance took me through the evidence, to submit that the evidence of minor victim is specific on the occurrence. Her sole testimony is sufficient to establish the guilt. According to the learned Additional Public Prosecutor, the evidence of watchman is not

reliable.

6. At this juncture, it is not expected to martial entire evidence and to express on the merits of appeal. It is only required to see whether the appellant has made out some arguable points to impeach the judgment under challenge.

7. In order to establish the guilt of accused, prosecution has in all examined six witnesses. Prosecution case solely depends upon the credibility of victim girl. Undeniably victim's sister is not examined nor CCTV Footage is collected. Perusal of the evidence and impugned judgment, emerges that the appellant has an arguable case on merits. During the trial, the appellant was on bail. The trial Court has imposed fixed term of sentence i.e. of five years. Normally, unless specific grounds are made out, there could be suspension of execution of sentence if it is a fixed term of some years. In case of success in appeal, the position would become irreversible about the pre-trial detention. The appellant has deposited entire fine amount in the Trial Court. The appeal will take considerable time for its disposal.

8. Having regard to all these facts, execution of substantive sentence passed in Sessions Trial No.30 of 2018 is suspended till final disposal of appeal.

9. In the meantime, appellant/applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

JUDGE

R.S. Sahare