

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

CRIMINAL APPLICATION (APPA) NO. 74/2022
IN
CRIMINAL APPEAL NO. 47/2022

Kailas s/o Rama Dawar (Jail) Vs State of Maha., thr. P.S.O., PS Hiwarkhed, Tq. Telhara, Dist. Akola and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Londhe, counsel for the Applicant/Appellant.
Shri V.A.Thakare, APP for the Non-applicant/State No.1.
Shri Sunil Bhuyar (Appointed) for the Non-applicant No.2

CORAM : ANIL S. KILOR, J.
DATED : 21/04/2022.

1. This is an application filed under Section 389 of the Code of Criminal Procedure for suspension of sentence and for grant of bail.

2. The applicant has been convicted by the learned District Judge and Additional Sessions Judge, Akot, Dist. Akola, vide its judgment and order dated 27/08/2021, passed in Special Case No. 29/2018, for the offences punishable under Sections 328 and 376(2)(i) of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act (POSCO Act) for the offence punishable under Section 328, the applicant is sentenced to suffer rigorous imprisonment for five years with fine of Rs. 5,000/-. The applicant is also directed to

suffer rigorous imprisonment for ten years with fine of Rs. 15,000/-, in default to suffer further imprisonment for one year for the offences punishable under Sections 3 and 4 of POSCO Act.

3. Learned counsel for the applicant has argued that no medical examination of victim was conducted for more than two years and after the matter was fixed for evidence, the application was moved by the Public Prosecutor for medical examination of victim which was allowed. He therefore, submits that he has very good case on merit and there is a every likelihood that he would succeed in the present matter.

4. On the other hand, Shri V.A.Thakare, learned APP opposes the present application. He submits that the offence is heinous. He has further submitted that the victim was eight years old girl on the date of alleged incident. He further points out that after marshalling the evidence available on record, the learned Special Judge has convicted the applicant/appellant and there is no perversity in the findings recorded by the learned Special Court.

5. Shri Bhuyar, learned counsel for the Non-applicant No.2 reiterated the submissions of the learned APP and prays for rejection of the present application.

6. I have perused the impugned judgment and order also the depositions of the witnesses. Prima-facie, I am of the opinion that the learned Special Court has recorded the findings against the applicant after proper scrutiny of the evidence. Moreover, looking at the nature of crime which is heinous, I am of the opinion that, the present application needs to be rejected. Hence, I pass the following order :

Criminal application is **rejected**.

[JUDGE]

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