

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPA) NO.71 OF 2022
IN
CRIMINAL APPEAL NO.45 OF 2022

Shaikh Sharik Shaikh Rahim

Versus

State of Maharashtra, through P.S.O., P.S. Yavatmal City, Yavatmal

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

Court's or Judge's Order

Shri Mir Nagman Ali, Advocate for the applicant.

Shri S.A. Ashirgade, A.P.P. for the non-applicant No.1/State.

CORAM : ANIL S. KILOR, J.

DATED : 29/04/2022

1. This is an application for suspension of sentence and grant of bail.

2. The appellant has convicted under Section 363 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs.2,000/-, in default to suffer Simple Imprisonment for two months. The appellant has further convicted under Section 4 of the POCSO Act and sentenced to suffer Rigorous Imprisonment for ten years and to pay fine of Rs.5,000/-, in default to suffer Simple Imprisonment for six months.

3. Shri Ali, learned counsel for the applicant submits that the evidence of the victim itself shows that there was love affair. He further submits that the challenge is raised to the fact that she was minor on the date of incident.

4. Learned counsel for the applicant therefore, submits that he has very good case on merit and there is every likelihood that he would succeed in the present matter.

5. Shri S.A. Ashirgade, learned APP opposes the present application.

6. Having considered the findings recorded by the learned Sessions Court and also the evidence of the victim, I am of the opinion that reapreciation and reappraisal of the evidence is necessary. The applicant was on bail during the trial and as there is no likelihood that this matter would come up for final hearing in near future. Thus, I am of the opinion that the present application needs to be allowed. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) The substantive sentence imposed by the learned Additional Sessions Judge, (Special Judge, (POCSO Act)) in Special (Child) Case No.23 of 2017 vide judgment and order dated 30.12.2021, is suspended till disposal of the appeal. Bail as in the trial Court with fresh bond.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]

Digitally signed by CHETAN
LOPCHAND DHAKATE
Signing Date: 30.04.2022
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