

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

CRIMINAL APPEAL NO. 32 OF 2022

Yakub S/o Ashok Karke

...Versus...

State of Maharashtra, Through the P.S.O., PS. Deulgaon Raja, Distt. Buldhana

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

Court's or Judge's orders

Shri R.M. Daga, Advocate for applicant
Shri S.D. Sirpurkar, A.P.P. for respondent/State

CORAM : SURENDRA P. TAVADE, J.

DATE : 21/01/2022

Heard.

2. **Admit.**

3. Call record and proceedings in Special (POCSO) Case No. 65/2019 from trial court.

4. Learned A.P.P. waives notice for the respondent-State.

CRIMINAL APPLICATION (APPA) NO. 46 OF 2022

This is an application for suspension of sentence and for grant of bail in Special (POCSO) Case No. 65/2019.

2. The applicant was prosecuted for the offences punishable under Sections 363, 366-A read with Section 34 of the Indian Penal Code. The applicant was held guilty for the offences punishable under Section 363, 366-A read with Section 34 of the Indian Penal Code. He was held guilty for the offences punishable under Section 363 read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay a fine of Rs.1000/- in default he

was directed to suffer S.I. for one month. The applicant was held guilty for the offences under Section 366-A read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay a fine of Rs. 2000/-, in default of payment of fine applicant was directed to suffer S.I. for two months.

3. It is contended that the applicant was released on bail during the pendency of trial. There are no allegations of breach of conditions of bail during the trial. It is contended that there are allegations against the applicant that he accompanied accused no. 1 to Deulgaon Raja and facilitated him to Kidnap the victim girl from her house and thereafter original accused No.1 took her to different places and committed sexual assault on her but applicant was no way concerned with the said act.

4. Perused the record and heard the learned Counsel for the applicant. He took me through the evidence of the victim wherein she has described how she went along with original accused No.1. She simply deposed in her evidence that when she came to Jalna Railway Station she saw the present applicant along with original accused No.1. Besides the said statement there is nothing in her evidence to show that the applicant had anyway facilitated the original accused No.1 to kidnap the victim. It appears that he accompanied the original accused No.1 in the house of victim and thereafter all three came to the Railway Station. So it can be said that at the most Section 363 could be made applicable to the applicant.

5. As far as Section 366 is concerned there are no allegations against the present applicant as well as original accused No.1 that he had forced the victim to have a sexual intercourse with

any other person. Therefore, I doubt whether the offence under Section 366-A could be applicable to the present applicant.

6. The applicant was released on bail during the pendency of trial. There was no allegation against him that he had misused his liberty anyway. The present appeal may not come up for hearing within short period. Therefore in my opinion the applicant is entitled for bail. Hence I pass the following order:

- (i) Application is allowed.
- (ii) The conviction imposed upon the applicant is hereby suspended till the disposal of this appeal.
- (iii) The applicant is ordered to be released on bail on furnishing P.R. bond of Rs. 15000/- with one surety in the like amount with condition not to contact prosecutrix in any way or whatsoever manner.
- (iv) Applicant is directed to attend the hearing of this appeal regularly.

(SURENDRA P. TAVADE, J.)

Jayashree..