

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

CRIMINAL APPLICATION (APPA) NO.199 OF 2022

IN

CRIMINAL APPEAL NO.158 OF 2022.

(Akshay Arunrao Chavan .Vs. The State of Maharashtra and Anr.)

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

Court's or Judge's order

Shri. P R. Agrawal, Advocate for Appellant.

Shri. S. M. Ghodeswar, APP for Respondent No.1/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 20th JUNE, 2022.

. The matter has already been admitted on 21.03.2022.

2. Heard learned Counsel for Appellant and learned Additional Public Prosecutor for Respondent No.1/State.

3. The Appellant has been convicted under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the said Act"). Unfortunately in this case, the victim has passed away on 04.12.2019. The record shows, that the informant Smt. Pramila Ramraoji Rangari the grandmother of the victim has been served. However none appears. The requirement of Section 40 read with Rule 4 (13), and (15) of the said Act, Rules therefore stand satisfied. The record indicates,

that though the victim due to her demise was not available for examination, the entire conviction is based upon the testimonies of PW-1 the grandmother and PW-3 the maternal aunt. The record as well as the evidence of PW-5 Dr. Prashant Kalbande the Medical Officer indicates that there were no injuries on the body of the victim as well as, on her private part, hymen was intact. PW-5 has admitted in his cross examination, that he did not find any sign of forcible sexual intercourse. That being the position, in absence of the evidence of the victim being available, the conviction under Section 4 of the said Act, could not *prima facie* be based upon the oral testimonies of PW-1 and PW-3 as there is nothing on record to indicate the satisfaction of the requirement of Section 3 of the said Act.

4. Mr. P. R. Agrawal, learned Counsel for Appellant submits, that the incident was dated 20.08.2018, the Appellant was arrested on 21.08.2018 and was enlarged on bail on 15.09.2018 and through out the trial he was on bail.

5. Considering the above position, a case for suspension of sentence is made out. The application is accordingly **allowed**. The sentence imposed on the Appellant by the impugned judgment is hereby suspended. The Appellant be released on furnishing

P.R. bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

JUDGE

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