

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

CRIMINAL APPLICATION (APPA) NO.232/2022

IN
CRIMINAL APPEAL NO.187/2022

Ram Rajkumar Parabate

...Versus...

The State of Maharashtra, Through Police Station Officer, Saoner Police Station,
District – Nagpur and another

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

Court's or Judge's orders

Shri A.J. Dhoble, Advocate for applicant/appellant
Shri Amit Chutke, APP for respondent no.1
Mrs. P.D. Rane, Advocate (appointed) for respondent no.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/06/2022

1. This application seeks suspension of sentence and grant of bail.
2. Heard Shri Dhoble, learned Counsel for the applicant/appellant, Shri Chutke, learned Additional Public Prosecutor for the respondent no.1 and Mrs. Rane, learned Counsel (appointed) for the respondent no.2.
3. The applicant/appellant has been convicted for the offence punishable under Section 363 of IPC, under Section 6 as well as Section 4 of the Protection of Children from Sexual Offences Act and under Section 376 (2) (n) of IPC and sentenced to suffer rigorous imprisonment for three years and ten years respectively.

4. Shri Dhoble, learned Counsel for the applicant submits that throughout the trial the applicant/appellant was on bail. After the conviction, the appellant has been taken into custody. Learned Counsel for the applicant submits, by inviting my attention to the medical report at Exh.33, that the same merely states that the hymen was ruptured, however, the age of the injury has not been stated, which according to him, was a material factor to indicate that the offence is committed by the applicant/appellant. He further submits that the P/S and P/V examinations were not done as the patient was not willing. Further inviting my attention to the evidence of PW 5- Dr. Dipali Suresh Behar, it is submitted that though she had opined that the possibility of sexual assault on the victim could not be ruled out, however, the final opinion was reserved till the report of the forensic laboratory, which was never received and therefore, there is no conclusivity to the finding of the Doctor, who in the cross-examination, itself has admitted that her report and opinion was not conclusive and the rupture of the hymen could be by any means including sexual intercourse. It is therefore submitted that considering the nature of the medical evidence, the conviction cannot be sustained and therefore, the applicant/appellant has a good case on merit and is entitled to release on bail.

5. Though learned Additional Public Prosecutor for the respondent no.1 with the assistance of Mrs. Rane, learned Counsel (appointed) for the respondent no.2 opposes the

application, however, considering that the opinion of PW -5 Dr. Dipali Behar, as to the nature of the assault being inconclusive and is not supported by the forensic report, in absence of it being brought on record and the medical report at Exh.33 not indicating any other injury, nor does it make any mention of any tear or its location nor the age of the rupture of the hymen, there appears to be a probable defence available. Considering that the applicant/appellant was already on bail before the learned Trial Court, which is not disputed by learned Additional Public Prosecutor, in my considered opinion, a case for suspension of sentence and grant of bail is made out. Hence the following order.

ORDER

(i) The criminal application is allowed. The sentence imposed by the learned Sessions Court by judgment dated 11/03/2022 is hereby suspended and the applicant be released on bail on his furnishing PR. Bond in sum of Rs.1,00,000/- (Rupees One Lakh Only) with two solvent sureties in like amount.

(ii) Bail before the lower Court.

(AVINASH G. GHAROTE, J.)