

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

Criminal Appeal No.328 of 2022

Kapil Ganesh Padghan

Versus

State of Maharashtra, through its Police Station Officer, Police Station
Khadan, Akola, Tq. & 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

Ms Rani Nitnaware h/f Shri O.Y.Kashid, Advocate for
the appellant.

Ms Haider, APP for the respondent/State.

Ms Seema Dhotre, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 22nd DECEMBER, 2022.

Heard.

2. **Admit.**

3. Ms. Haider, learned Additional Public
Prosecutor waives service of notice on behalf of
respondent/State.

4. Ms Seema Dhotre, learned counsel waives
service of notice on behalf of respondent no.2.

5. Call for the Record and Proceedings.

Criminal Application (APPA) No. 395 of 2022

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

7. The applicant has filed an appeal challenging the judgment and order dated 6th April, 2022 passed by the learned Joint District Judge and Additional Sessions Judge, Akola in Special Case Child Prot. No.124 of 2019, convicting the applicant for the offence punishable under Section 366A, 363 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of five years and to pay fine of Rs.5,000/- in default of payment of fine, he shall suffer simple imprisonment for a period six months.

8. He was further convicted for the offence punishable under Section 42 of the Protection of Children from Sexual Offences Act (POCSO Act) for the offence punishable under Section 354A of IPC read with Sections 11 & 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for three years with fine of Rs.2,000/- in default of payment of fine amount he shall suffer simple imprisonment for two months.

9. I have perused the findings recorded by the learned trial Court in the impugned judgment and order and thereupon, I am of the opinion that applicant is having arguable case and re-appreciation and reappraisal of the evidence is necessary in this case. There is no likelihood that this matter would come up for final hearing in near future. There is one more ground is that the applicant was on bail during the trial. Accordingly, I pass the following order:

- i. Criminal application is allowed.
- ii. The sentence imposed by the learned Extra Joint District Judge and Additional Sessions Judge, Akola in Special Case Child Prot. No.124 of 2019 vide judgment and order dated 6th April, 2022 is suspended till disposal of the appeal.
- iii. Bail as in the trial Court with fresh bonds.

[ANIL S. KILOR, J.]