

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

CRIMINAL APPEAL NO. 253 OF 2022

(Pawan s/o Baburao Mahadole Vs. The State of Mah. & anr.)

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

Court's or Judge's Order

Shri A.D. Hazare, Advocate for the appellant.
Ms. Kalyani Deshpande, APP for the respondent No.1/State.
Shri P.J. Mehta, Advocate for respondent No.2

CORAM : AMIT BORKAR, J.

DATED : MAY 13, 2022.

Heard.

2. **ADMIT.**

3. Learned APP waives notice for
respondent No.1/State.

CRIMINAL APPLICATION NO.316 OF 2022

Heard.

2. This application is filed under Section 389 of the Criminal Procedure Code, 1973, seeking suspension of sentence imposed by the learned trial Court for the offence punishable under Sections 376(1) of the Indian Penal Code.

3. The learned trial Court has convicted and sentenced the applicant for a period of Seven years and imposed fine of Rs.3000/- (Rs. Three thousand only).

4. I have heard learned Advocate for the applicant, learned Additional Public Prosecutor for the State and learned Advocate for respondent No.2.

5. Learned Advocate for the applicant submitted that during the pendency of trial the applicant was on anticipatory bail. He submitted that the parties are settled the matter and at the time of alleged incident the victim was around 17 years of age. He further submitted that the applicant and non-applicant No.2 were in love relationship for around two years and the physical relationship was out of the said love.

6. Learned Additional Public Prosecutor objected for suspending the sentence.

7. I have carefully considered the judgment and the depositions of the witnesses which is on record by the applicant.

8. It appears that the relationship between the applicant and the victim was for a period of more than two years. *Prima facie* it appears that the sexual intercourse between the applicant and non-applicant No.2 was consensual in nature. Since the applicant was on bail during the pendency of trial, the applicant has made out a case for suspension of sentence. Hence, I pass the following order :

- a) The substantive jail sentence imposed by the impugned judgment and order dated 28/03/2022 in Sessions Case No.44/2013 is suspended.
- b) The accused Pawan s/o Baburao Mahadole shall be released on bail on furnishing Personal Bond of Rs.10,000/-

(Rs. Ten thousand only) and Rs.1000/-
(Rs. One thousand only) surety to the like
amount.

- c) During the pendency of the present
appeal, the applicant shall report the
nearest police station once in a six
months.
- d) The applicant shall remain present at the
time of final hearing of the appeal.

9. The application stands disposed of.

10. Hamdast granted.

(AMIT BORKAR, J.)

**DB*