

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

CRIMINAL APPLICATION [APPA] NO.464 OF 2022

IN

CRIMINAL APPEAL NO.384 OF 2022

[Hitesh s/o Bhagwatrao Doijod .vs. State of Maharashtra, through Police Station Officer of Police
Station, Narkhed and one]

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

Court's or Judge's orders

Shri R.M. Patwardhan, Advocate for applicant,
Shri A.M. Kadukar, APP for respondent no.1-State,
Mrs. Sonali Saware/Gadhawe, Advocate for respondent no.2.

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CORAM : SMT. M.S. JAWALKAR, J.

DATED : 20/09/2022.

Present application is filed by the applicant for suspension of sentence and for grant of bail.

2. Learned counsel for the applicant submitted that the incident took place on 24.01.2016 and the complaint came to be lodged on 27.01.2016. He therefore submitted that the complaint was lodged is afterthought as to overcome the prosecution initiated by the applicant against the brother of the victim who assaulted the applicant. It is further submitted that there is no cogent and reliable medical evidence to show that victim was subjected to rape. It is submitted that during the pendency of the matter, the applicant was married and blessed with a daughter who is a minor of 3-4 years of age. During trial, the applicant was on bail and there is no incidence of misuse of bail. As such, the applicant prays for suspension of sentence and release him on bail.

3. Learned Additional Public Prosecutor for respondent no.1-State, so also learned counsel for respondent no.2 vehemently opposed the application, as the sentence awarded is ten years and offence is duly established by the prosecution.

4. It is the fact that the appeal cannot be heard in near future considering the pendency of the matter. It is also the fact on record that the victim was 17 years and 8 months. Thus, she was at the verge of age of majority. It is the defence of the accused that it is a case of love affair. It is also submitted that so called recording of alleged incident in mobile is not at all found in the seized mobile.

5. In view of above submission possibility of consensual act cannot be ruled out. I have gone through the record and evidence led by the parties. Considering the fact that the applicant was on bail during trial and there is no instance of misuse of bail, it would be appropriate to suspend the substantive sentence during the pendency of appeal and release the applicant on bail by imposing certain conditions so that apprehension of the prosecution can be taken care of. Accordingly, I proceed to pass the following order :

ORDER

(i) The execution of substance sentence passed by the learned Extra Joint Additional Sessions Judge, Nagpur in Special POCSO Case No.135/2016, dated 30.04.2022 is hereby suspended.

(ii) Appellant-accused be released on bail during the pendency of appeal on his furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Sessions Court.

(iii) Appellant-accused will not try or to make attempt to meet the victim or witnesses.

(iv) Appellant-accused shall attend Narkhed Police Station, Tahsil-Narkhed, District-Nagpur on each of first date of every month between 11 am to 5 pm.

(v) Criminal Application is allowed and disposed of.

[SMT. M.S. JAWALKAR, J.]

Gulande