

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

CRIMINAL APPLICATION (APPA) NO.941 OF 2022 IN
CRIMINAL APPEAL NO.716 OF 2022

RAMDAYAL S/O VYANKAT PACHORE VS STATE OF MHA. THR. PSO PS CHAMORSHI
DIST.GADCHIROLI

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

Court's or Judge's Order

Shri V.N. Morande, Advocate for applicant
Shri V.A. Thakare, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 15.12.2022.

This is an application filed under Section 389(2) of the Code of Criminal Procedure for suspension of sentence and grant of bail.

The applicant was convicted for the offence punishable under Section 376(1) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.30,000/-, in default to pay fine, further to suffer rigorous imprisonment for six months.

The applicant was further convicted for the offence punishable under Section 447 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three months and to pay fine of

Rs.1,000/-, in default to pay fine, further to suffer rigorous imprisonment for 15 days.

The learned counsel for the applicant is harping on a point that there was a consent and sufficient evidence has been brought on record in this regard, however, it has been ignored by the learned Sessions Court. It is submitted that as the consent is established, no offence under Section 375 of the IPC attracts in this case and therefore, punishment under Section 376 is not sustainable in the eyes of the law.

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 Sessions Judge, Gadchiroli Sessions Case No.124 of

2018 vide judgment and order dated **07.09.2022**, is suspended, till disposal of the appeal.

iii. Bail as in the trial Court with fresh Bonds.

[JUDGE]