

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2092 OF 2023
IN APEAL/508/2023

JAGDISH RAMBHAU BHOGE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Dhananjay S. Patil
APP for Respondent No.1/State : Mr. K. S. Patil
Advocate for Respondent No.2 : Ms. Manjushri V. Narwade
(Appointed)
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CORAM : S. G. MEHARE, J.

DATE : 04-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned counsel for the respondent No.1/State and the learned counsel for respondent No.2/victim.
2. The applicant who is transgender has been convicted for the offence punishable under Section 366 read with Section 109 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for four years by the learned Additional Sessions Judge-2, Jalna, in Special Case (Child) No.28 of 2020, vide order dated 18.05.2023.
3. The learned counsel for the applicant would submit that the role attributed to the applicant has not been proved; however, the erroneous findings have been recorded against him that he

handed over the custody of the kidnapped girl from accused No.1 to accused No.4. The victim was in advanced age and was able to understand the worldly affairs. There were no antecedents to the discredit of the applicant. He was on bail throughout the trial. The ingredients of Section 366 of the Indian Penal Code have not been proved against him. Considering the observations recorded against him, he had barely handed over the child in the custody of accused No.4 through accused No.1, it did not constitute the offence as allegedly proven against him. He was never the part of the crime. He was used by other co-accused. Considering the short term sentence, it may be suspended till conclusion of the appeal.

4. The learned A.P.P. and learned counsel for respondent No.2/the victim have vehemently argued that the applicant was a part of the racket run by accused. The victim has been exploited. She was not only kidnapped but the co-accused raped her. The applicant had played active role in kidnapping the child. The offence is grave and serious. The evidence was sufficient to prove the guilt against him and accordingly the learned Additional Sessions Judge appreciating the evidence correctly held the accused guilty. The offence is against the society. Considering his gender, the Court has taken a lenient view and imposed lesser sentence. The life of many girls may be in danger if accused is released on bail on suspending the sentence.

5. The learned counsel for the applicant relied on the case of *Mahadeo Mallesha Birajdar v. State of Maharashtra*, AIR Online 2023 Bom 53, in which the Bombay High Court held that there were no complaints made by the victim while traveling with the accused for quite some distance, the sentence imposed was short term i.e. for three years. The appeal was not likely to be decided within short period. The applicant was on bail during trial. There were no complaints of misuse of liberty granted to him. On these facts, the Court was pleased to suspend the sentence.

6. The Hon'ble Apex Court in the case of *Kiran Kumar Vs. State of M.P.*, (2001) 9 SCC 211, has laid down the law, on suspension of sentence during the appeal that when a person is convicted and sentenced to a short-term imprisonment, the normal rule is that sentence passed on him should be suspended, unless there are exceptional reasons to deny the suspension.

7. In the case of *K.C. Sareen vs C.B.I., Chandigarh*, (2001) 6 SCC 584, the Hon'ble Supreme Court has held that the Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

8. It is also the law that the suspension order has to be passed on careful consideration of all the aspects and not as a matter of routine course.

9. Perused the impugned judgments and orders.

10. Admittedly, the victim traveled with the present applicant from Jalna to Washim for a sufficient period and she did not complain against the applicant. The applicant has been imposed sentence for short term i.e. for four years. It is to be examined whether the role attributed to the applicant amounts to an offence under Section 366/109 of the Indian Penal Code. It is also to be examined whether the applicant was a member of the racket involved in the similar crime. The law is also settled that the short-term sentence may be suspended.

11. Considering the facts of the case and no hopes of listing the matter for final hearing in the near future, the Court is of the view that the applicant deserves suspension of the sentence. Hence, the order:-

- i) The application is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant by the learned Additional Sessions Judge-2, Jalna, to suffer rigorous imprisonment for four years for the offence punishable under Section 366/109 of the Indian Penal Code, in Special Case (Child) No.28 of 2020, dated 18.05.2023, stands suspended till conclusion of the appeal.

- iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of like amount.
- iv) Bail before the learned Additional Sessions Judge-2, Jalna.
- v) The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do pay the fee to the learned counsel appointed for respondent No.2/victim as per the schedule.

**(S. G. MEHARE)
JUDGE**

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