

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2989 OF 2022
IN APEAL/654/2022 WITH APEAL/654/2022

NANA LAXMAN SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent No.1/State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Shaikh Mazhar Abdul Hamid
Jahagir
...

CORAM : S. G. MEHARE, J.

DATE : 19-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/victim.
2. The applicant seeks suspension of sentence imposed upon him to suffer rigorous imprisonment for ten years for the offence punishable under Section 376 of the Indian Penal Code, rigorous imprisonment for two years each for the offences punishable under Sections 363 and 366 of the Indian Penal Code, by the learned Additional Sessions Judge, Ahmednagar, in Special Case No.190 of 2019, by her judgment and order, dated 08.07.2022.

3. The learned counsel for the applicant would submit that the prosecution though three witnesses have been examined, did not prove the exact age of the victim and no witness had cogently proved that she was below sixteen years at the time of the incident. He would argue that she was fully grown up and was a major at the time of incident. She admitted in her cross-examination that she was leaving home voluntarily and permanently with the applicant. In the family of the victim, all sisters got married when they were below eighteen years and mostly at the age of fifteen. The applicant never suspected that she was below sixteen. He believed on her statement that since she has left the school from last four to five years and she had attained the majority. It was a solitary incident. The evidence as regards sexual assault, is also not cogent and clear. On the very second day of their eloping, they were arrested and the victim was released. There were no injuries on the person of the victim, allegedly caused during the sexual assault. P.W.No.7 a Medical Officer has opined that it was not the case of penetration. All these material aspects have not been properly appreciated by the learned Additional Sessions Judge and the accused has been erroneously held guilty for the offence of sexual assault with a child. The applicant had no bad past. He never tampered with the prosecution witnesses. The applicant is a young boy of twenty five. Since *prima facie* material is against him, he was under-trial

prisoner. He is behind bars since 2018. The evidence needs to be appreciated. The applicant is sanguine chances of success in the appeal. Hence, his sentence may be suspended.

4. The learned A.P.P. and the learned counsel for the victim have strongly opposed the application. They would submit that the entire evidence is against the applicant. The parents and the victim are consistent as regards taking away the victim without the consent of guardian. *Prima facie* it was proved beyond the reasonable doubt that she was below sixteen years at the time of the incident. The prosecution had proved her age by examining competent witnesses. Hence, such witnesses cannot be doubted. The offence is serious. The accused and the victim are resident of the same vicinity. The possibility of repeating the crime cannot be ruled out.

5. Perused the impugned judgment and order and also examined relevant evidence of the witnesses.

6. The victim has given a candid admission in her cross-examination that she left the school prior to four to five years from the incident. She had an idea that she was going to flee away with the accused and also leaving house forever. The appeal is not likely to be heard in the near future. There are good grounds to impugn the judgment of conviction. The applicant is a young boy. The evidence needs to be re-appreciated. Hence, considering

these aspects, the Court is of the view that the sentence is liable to be suspended till conclusion of the appeal. Hence, the order:-

- i) The application is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant to suffer rigorous imprisonment for ten years for the offence punishable under Section 376 of the Indian Penal Code, rigorous imprisonment for two years each for the offences punishable under Sections 363 and 366 of the Indian Penal Code, by the learned Additional Sessions Judge, Ahmednagar, in her judgment and order passed in Sessions Case No.190 of 2019, dated 08.07.2022, has been suspended till the conclusion of the appeal.
- iii) The applicant be released on bail on executing PB and SB of Rs.50,000/- with a solvent surety of like amount on the conditions that,
 - (a) He shall behave like good man.
 - (b) He shall be in contact with his lawyer during the course of appeal.
 - (c) He shall be released on bail on depositing the fine amount, if not deposited.
- iv) Bail before the learned Additional Sessions Judge, Ahmednagar.
- v) List the appeal in due course.

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