

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

CRIMINAL APPLICATION (APPA) NO. 30 OF 2023

IN

CRIMINAL APPEAL NO. 693 OF 2022

Arjun Dattu Tayde

Vs.

State of Maharashtra, Thru. PSO, PS Jalgaon Jamod, District – Buldhana and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Daga, Advocate for appellant.

Mr. A.M. Kadukar, APP for respondent No.1.

**CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.**

DATE : 20.04.2023.

This is an application seeking for suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure. The applicant-Arjun (accused No.2) was convicted in Special Case No.9/2017, for the offences punishable under Section 376(D), 376(2)(n) and 506 of the Indian Penal Code. He has been sentenced to undergo imprisonment for life along with fine for the offence punishable under Section 376(D) of the Indian Penal Code and the same quantum for the offence punishable under Section 376(2)(n) of the Indian Penal Code. All substantive sentences are

directed to run concurrently. The applicant seeks suspension on various grounds amongst which it has been prominently canvassed that he is in jail for the period from six years, four months and co-accused having similar allegations has already been granted the benefit of suspension by this Court in Criminal Application No.935/2022. Besides that, it is canvassed that though the applicant was also charge for the offence punishable under Protection of Children from Sexual Offences Act, 2012, (for short POCSO Act), however, trial Court disbelieved the prosecution case about age of victim and therefore, conviction was only for the offences under Indian Penal Code.

2. The appellant's learned counsel has submitted that though the alleged incident is dated 04.10.2014, however, FIR has been lodged on 30.12.2016, that is after lapse of two years. According to him, at the most, it is a case of consensual relationship, since, the incident though allegedly repeated, was not disclosed to anyone. Besides that some inconsistencies of the evidence have been pointed out to claim suspension. The State resisted this application by contending that the offences are of serious nature, the

applicant/appellant found to be biological father of a child born to the victim and mere long incarceration cannot be a ground for suspension.

3. In all three accused were put on trial for the offences under Indian Penal Code as well as POCSO Act. The prosecution was not able to prove the age of victim in the trial. As per victim's case, on 04.10.2014, i.e. two years prior to the FIR in the afternoon around 1:00 p.m. while she was fetching water co-accused Dnyaneshwar @ Ganesh forcibly dragged her to his house, where all three committed rape. It is her contention that on three to four occasion, all accused repeated the things but, she keep quiet out of fear. The prosecutrix stated that after two years when her mother enquired with her about menstrual cycle, at that time, she has disclosed the things, which resulted into lodging of FIR. The role assigned to all accused is one and the same. Rather role of co-accused Dnyaneshwar @ Ganesh is grave, since, he allegedly dragged victim to his house and then, gave threats for not to disclose the things. True, the applicant was found to be biological father of the child, however, submission that in DNA profile out of three, DNA of one of them would naturally be detected cannot be ruled out.

4. *Prima facie*, we have examined the submission about consensual sexual intercourse. As per the finding of trial Court, the prosecution has failed to establish the age of victim. There is two years long delay in disclosing the things. Certainly, this fact is to be meticulously weighed rather would be an important aspect for consideration at the trial. The applicant is in jail for a period of six years and four months. There is no possibility of appeal coming for hearing in near future. The rest of the accused facing similar charges have been released on bail on suspension. Having regard to above facts, we deem it appropriate to suspend the execution of sentence of applicant.

5. In view of that, we hereby suspend the execution of substantive sentence, insofar as applicant-Arjun is concerned, till the disposal of appeal.

6. The applicant-Arjun shall be released on bail subject to such terms and conditions, as may imposed by the trial Judge.

7. The application stands disposed.