

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

CRIMINAL APPLICATION (APPA) NO. 344/2023
IN
CRIMINAL APPEAL NO. 199/2023

Nandkishor s/o Santosh Wadhai V/s State of Maharashtra and another

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

Court's or Judge's Order

Mr. A.C.Jaltare, counsel for applicant/appellant.

Mr. I.J.Damle, APP for non-applicant No.1/State.

Ms. D.V. Sapkal, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/08/2023.

1. The present application is for suspension of sentence and releasing the applicant/appellant on bail.
2. The applicant/appellant was prosecuted for the offence punishable under Sections 376(2)(i)(j)(n) of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, 2012.
3. After appreciation of the evidence, the learned trial Court held the appellant guilty of the offence punishable under Section 376(2)(i)(j)(n) and sentenced him to suffer R.I. for Twenty Years and shall pay a fine of Rs. 5,000/- in default, R.I. for 12 months.

4. Being aggrieved and dissatisfied with the judgment, the present appeal is preferred by the applicant/appellant, on the ground that the learned trial Court has not considered the evidence of the victim, who stated that there was a love affair between her and the present applicant/appellant, and due to which they attracted towards each other. Out of a love affair, there was a physical relationship between them, which resulted in the pregnancy of the victim. She delivered a child and the applicant/appellant is declared as a biological father of the said child.

5. Learned counsel for the applicant/appellant further submitted that admittedly there was a love affair, and out of that, the said physical relationship was there. However, the learned trial Court has not considered the same and wrongly convicted the applicant/appellant. The applicant/appellant has not been punished under the provisions of the Protection of Children from Sexual Offences Act, 2012 but he has been held guilty and punished under Section 376(2)(i)(j)(n) of the Indian Penal Code. Perused the impugned judgment and deposition of the victim, who has specifically admitted that there was a love affair between her and the present applicant/appellant. She further admitted in her chief-examination itself, that she used to meet the present

applicant/appellant and she joined the company of the present applicant/appellant, out of the love affair. Thus, the relationship between the present applicant/appellant and the victim is out of a love affair, however, subsequently, as the victim was below the age of 18 years. Her parents lodged the report and the applicant/appellant was prosecuted.

6. Considering the peculiar circumstances, which are not considered by the learned trial Court while awarding the punishment, the present appeal is preferred. Admittedly, the evidence on record shows that the victim was below 18 years of age, she was pregnant. She delivered a child but the entire relationship was admittedly out of love affair. Considering the same, the applicant/appellant has made out the case which shows that he has every chance of success in the present appeal. Therefore, the applicant/appellant has preferred this appeal and it is submitted that the appeal will take its own time for its final decision. In the meantime, if the sentence is executed no purpose will be served by preferring this appeal, and hence sentence be suspended.

7. Present application has been strongly opposed by the learned APP as well as the learned appointed counsel for the non-applicant no.2 also

opposed the said application, on the ground that the applicant/appellant has not made out any case to suspend the sentence.

8. Heard both the sides. Perused the record and the impugned judgment. The victim has admitted her love affair with the applicant/appellant. She was more than 16 years at the time of the incident and was on the age of understanding. Considering she is below of 18 years of age, the provisions are attracted and the applicant/appellant is held guilty. The applicant/appellant has made out the case to show that he has every chance of success in the present appeal.

9. In view of that, the application for suspension of sentence deserved to be allowed. Accordingly, I proceed to pass the following order.

- a. The criminal application is allowed.
- b. The execution of the sentence is suspended till disposal of the appeal.
- c. The applicant/appellant is released on bail on furnishing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.
- d. The applicant/appellant shall attend the learned trial Court on first of every month

and learned trial Court shall record his presence.

- e. The applicant/appellant shall furnish the cell phone number and address with the address proof
- f. The applicant/appellant shall deposit the fine amount before the learned trial Court within one week.

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- 1. Record and Proceedings is already received.
- 2. The appeal be placed before the Court after preparation of paper-book.
- 3. Stand over after two weeks.

JUDGE