

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
CRIMINAL APPLICATION (APPA) NO. 272 /2023
IN
CRIMINAL APPEAL NO.154/2023

Vishal @ Kallu Sheshrao Umale .. Applicant
versus

The State of Maharashtra

Th: Its PSO PS MIDC Akola and another .. Respondents

.....
Mr. G.L.Agarwal, Advocate (appointed) for the applicant

Mr. MJ.Khan, APP for Respondent No.1

None for Respondent No.2
.....

CORAM: ANIL L. PANSARE, J.

DATED : 8th March, 2023.

PC:

Heard.

2. The applicant has filed this application under section 389 of the Code of Criminal Procedure. The applicant has been convicted by the judgment and order dated 13.06.2022 passed by the learned Additional Sessions Judge, Akola in Spl. Child Prot. Case No.120/2019 for the offences punishable under Sections 11(iv), 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 354, 354D of the Indian Penal Code and sentenced to suffer RI for three years with fine of Rs. 5,000/-, i/d. to suffer SI for a period of six months.

3. The learned Advocate for the applicant submits that the sentence was not suspended after pronouncement of the judgment and that the applicant is in jail since 13.06.2022. He further submits that pending trial, he was in jail from 31.08.2019 to 1.02.2020. Thus,

according to him, the applicant has undergone about 14 months of imprisonment.

4. Thus, it appears that the applicant has already undergone substantial sentence. The accusation against the applicant is that he was stalking the girl/victim/respondent No.2. The evidence indicates that he stopped his auto rickshaw, followed and stopped the victim and asked her to talk with him. It further appears that at the relevant time, the applicant had consumed liquor.

5. On enquiry, the learned counsel for the applicant submits that there are no criminal antecedents against the applicant. He is permanent resident of Akola. At this stage, the learned APP submits that the appeal could be decided finally at admission stage. However considering the pendency of appeals the present appeal is not likely to be taken for hearing in near future. Considering the accusation against the applicant and the period he has already undergone, in my considered view, the execution of the sentence ought to be suspended.

6. Learned APP however submits that the applicant has not paid the fine amount. This cannot be the ground, not to suspend the sentence because the sentence could be suspended subject to payment of fine.

7. In view of the above, this is a fit case where the execution of sentence should be suspended. Hence the following order :

ORDER

Subject to payment of fine, the execution of the sentence imposed upon the applicant- Vishal alias Kallu Sheshrao Umale, by

judgment and order dated 13.06.2022 passed by learned Additional Sessions Judge, Akola, in Spl. Case Child Prot. No.120/2019 for the offences punishable under sections 11(iv), 12 of the POCSO Act, 2012 and Section 354, 354D of the Indian Penal Code is hereby suspended and he is directed to be released on bail, on the following conditions:

- (i) The applicant shall deposit fine amount of Rs.5000/- imposed vide order dated 13.06.2022.
- (ii) The applicant shall furnish PR bond in the sum of Rs. 25,000/-, with one solvent surety in the like amount before the lower Court.
- (iii) The applicant shall remain present before this Court at the time of final hearing of the Appeal.

8. The professional fees of Mr. G.L.Agrawal, Advocate (appointed) for the applicant be quantified and paid as per Rules.

Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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