

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

CRIMINAL APPLICATION (APPA) NO. 213 OF 2023
IN
CRIMINAL APPEAL NO. 108 OF 2023

Samadhan S/o Arjun Dongre

..VS..

State of Maharashtra through PSO, PS. MIDC, Akola and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.V. Rai, Advocate for appellant.

Mr. M.J. Khan, APP for respondent No.1/State.

Ms. Mohini Sharma, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 21, 2023

Present application is for suspension of sentence and for grant of bail.

2. The appellant was prosecuted for the offence punishable under Sections 452, 354, 354A (1)(i) of the Indian Penal Code (for short "IPC") and Section 8 and 9 punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

3. As per the allegations, present appellant has molested a minor girl aged about nine years on 03.07.2020. The prosecution has adduced the evidence to prove the charge. Learned trial Court has appreciated the evidence and come to the conclusion that the prosecution has proved that victim is minor at the relevant time and she was subjected for sexual assault

as well as sexual harassment at the hands of the appellant/accused and accused held guilty for the offence punishable under Sections 354, 354(A)(i), 452 of the IPC and under Section 8 and 10 of the POCSO Act. The appellant was convicted and sentenced to suffer five years Rigorous Imprisonment and fine of Rs.1000/- for the offence punishable under Section 354 of the IPC and in default to suffer Rigorous Imprisonment for one month. The appellant is also convicted for the offence punishable under Sections 354(A)(i) and 452 of the IPC and under Section 8 and 10 of the POCSO Act. Being aggrieved and dissatisfied with the said judgment and order of sentence, present Appeal is preferred by the appellant on the grounds that the learned trial Court has not considered the material evidence and ought to have appreciate that the evidence of the prosecution suffering from infirmities and erroneously convicted the present appellant. The appellant has every chance of success in the present appeal however, the appeal will take its own time for its final decision, in the meanwhile if the sentence is executed, then the appeal will become infructuous hence, prays for suspension of the sentence and release the appellant on bail.

4. Said application is strongly opposed by the State on the ground that the learned trial Court has rightly held the present appellant guilty and therefore, the Application deserves to be rejected.

5. Heard Mr. M.V. Rai, learned counsel for the appellant and Mr. M.J. Khan, learned APP for the State.

6. Perused the judgment of the trial Court and the grounds of the appeal. The appellant has pointed out in the grounds some infirmities, which suggest that the appellant has every chance of success in the present appeal. The appeal will take its own time as there is no possibility that Appeal would be decided in near future. In the meanwhile if the sentence is executed, then the appeal will become infructuous. In view of that, the Application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The Criminal Application No.213/2023 is allowed.
- (ii) The execution of the sentence is suspended till final disposal of the appeal.
- (iii) The appellant – Samadhan S/o Arjun Dongre is released on bail on executing P.R. bond of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall furnish his cellphone number and address with the address proof. Additionally the appellant shall submit names of his two nearest relatives and their address with address proof.

7. The application is disposed of.

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The appeal be placed before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

Kirtak