



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

CRIMINAL APPLICATION (APPA) NO. 348/2023 IN
CRIMINAL APPEAL NO. 206/2023

Rahul s/o Dipkarao Ubale 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. M.V.Rai, counsel for applicant.

Mr. M.J.Khan, APP for non-applicant No.1.

Mrs Sonali Saware/Gadhawe, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/08/2023.

1. The present application is for suspension of sentence and for releasing the applicant on bail.
2. The applicant/appellant was prosecuted for the offence punishable under Section 354 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').
3. Learned trial Court after appreciation of the evidence held the present applicant/appellant is guilty for the offence punishable under Section 8 of the POCSO Act and sentenced to suffer R.I. for three years and fine of Rs. 3000/-. He is also convicted for the offence punishable under Section 12 of the POCSO Act and sentenced to suffer R.I. for one year, as well as

under Section 354 and sentenced to suffer R.I. for three years. He further convicted for the offence punishable under Section 342 and sentenced to suffer R.I. for one year.

4. The applicant/appellant has challenged the judgment and order of sentence on various grounds excluding the ground that the learned trial Court has not considered that the prosecution has not proved that there was no outraging of modesty as the ingredients of the offence are not proved. The learned trial Court has not appreciated the evidence in a proper perspective. 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 meantime, if the sentence is executed, the appeal would become infructuous.

5. The said application is strongly opposed by the State as well as learned counsel for the non-applicant No.2, on the ground that learned trial Court has rightly considered the evidence and rightly convicted the applicant/appellant, no grounds are made out to suspend the sentence. Learned APP further submitted that earlier also, the present applicant was prosecuted for the offence punishable under Section 376, 511 and 506 of the Indian Penal Code in Crime No. 245/2012

and convicted the offence punishable under Section 354 of the Indian Penal Code and Section 8 of the POCSO Act and sentenced for three years for imprisonment.

6. Having heard learned counsel for the applicant, learned APP for the non-applicant No.1/State, and learned appointed counsel for the non-applicant No.2.

7. Perused the impugned judgment as well as rounds of appeal. The appellant has pointed out various arguable points which are available and shown that he has every chance of success in the present appeal. However, 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.

In this view of the matter, I proceed to pass following order:

ORDER

- a) The criminal application is allowed.
- b) The execution of the sentence be suspended till disposal of the appeal.
- c) The applicant be released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.

- d) The applicant shall not involve in similar types of offence.
- e) The applicant shall furnish his cell phone number with address along with address proof.
- f) On contravention of any of the condition, the bail granted to the applicant deserves to be cancelled.
- g) Fees of the learned appointed counsel for the Non- applicant No.2 is quantified as per the Rules.

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Appeal be placed before the Court after preparation of the paper-book for final disposal.

JUDGE