

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

CRIMINAL APPLICATION (APPA) NO. 403 OF 2022
IN
CRIMINAL APPEAL NO. 338 OF 2022

Ramrao S/o Ramdas Bawane

..VS..

State of Maharashtra through PSO, P.S. Ramnagar, Dist. Chandrapur

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

Court's or Judge's orders

Mr. R.S. Bhalerao, Advocate for applicant/appellant.

Mr. M.J. Khan, Additional Public Prosecutor for
non-applicant/respondent No.1/State.

Mr. S.H. Bhatia, Advocate (appointed) for
non-applicant/respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 21, 2023

Present application under Section 389 of the Code of Criminal Procedure (Cr.P.C.) is filed by the applicant/appellant for seeking suspension of sentence and for grant of bail. The appellant was prosecuted for the offence punishable under Sections 376(1), 376(2)(j) and 376(2)(1) of the Indian Penal Code (IPC). After the examination of the witnesses, the learned trial Court appreciated the evidence and held that the evidence of the victim corroborated by the other evidence which is sufficient to show the involvement of the present applicant in the alleged offence and held him guilty for the offence punishable under Section 376(1) of the IPC and sentence to suffer Rigorous Imprisonment for a period of seven years and pay fine of Rs.3,000/-, in

default of payment of fine suffer further Simple Imprisonment for a period of six months. The benefit of Section 428 of the Cr.P.C. is also given to the present applicant/accused.

2. Being aggrieved and dissatisfied with the judgment and order of sentence, present Appeal is preferred by the appellant on the ground that learned trial Court has not considered that the evidence of the victim was not cogent and reliable and was not inspiring the confidence. It is also not corroborated by the medical evidence. The learned trial Court erroneously held that the evidence of the victim is sufficient to held the present accused guilty. Further ground raised by the appellant is that he has every chance of success in the present Appeal as there are various arguable points which are not considered by the learned trial Court. The learned Sessions Judge failed to appreciate that most of the allegations against the appellant unproved to be improvements and there are omissions and contradictions which goes to the root of the case. Considering the Appeal will take its own time for its final decision, in the meanwhile if the sentence is executed then Appeal will become infructuous and prays for releasing the applicant/appellant on bail by suspending the execution of the sentence.

3. Said application is strongly opposed by the State on the grounds that the learned trial Court has already considered the evidence and rightly come to the

conclusion that there is material which sufficiently shows that the appellant is guilty for the offence punishable under Section 376(1) of the IPC and held him guilty. It is further contention of the State that the grounds raised by the appellant are not sufficient to show that he is having any chance of success in the present Appeal hence, the application deserves to be rejected.

4. Heard Mr. Bhalerao, learned counsel for the applicant/appellant. He reiterated the contentions and submitted that the depositions which are filed on record sufficiently shows that there are improvements and variance in the evidence of the prosecution witnesses. The evidence of the victim does not inspire the confidence and not sufficient to held the appellant is guilty. However, learned trial Court has not considered the same and erroneously held the appellant guilty. The applicant is every chance of success in the Appeal. During the trial, the applicant was on bail and he has not misused the liberty. The appeal will take its own time for its final decision.

5. Admittedly, the appeal will takes its own time for its final decision. I have perused the grounds of the appeal also. Learned APP Mr. M.J. Khan, invited my attention towards recent decision of the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary and Another***, in ***Criminal Appeal Nos. 1331-1332 of 2023*** decided on 02.05.2022. After considering

the decision of the Hon'ble Apex Court wherein the Apex Court held principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of the competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. It is further held that from perusal of Section 389 of the Cr.P.C., it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage. By referring various judgments, the Hon'ble Apex Court further held that bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the

bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

6. In view of above, the law laid down by the Hon'ble Apex Court if the grounds of appeal are taken into consideration the appellant has submitted that the trial Court has not considered the omissions and contradictions which goes to the root of the matter. The appellant further raised the ground that there is no medical evidence to corroborate story of the prosecution which is ignored by the trial Court.

7. Considering the grounds raised and after going through the evidence recorded by the trial Court, there is reasons to believe that the appellant has a chance of success in the present appeal. In view of that the application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The Criminal Application No.403/2022 is allowed.
 - (ii) The execution of the sentence is suspended till final disposal of the appeal.
 - (iii) The appellant – Ramrao S/o Ramdas Bawane 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 remain present on 5th of every month and the trial Court shall record his presence before it.
 - (v) 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 address with their address proof.
8. 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.)