

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

CRIMINAL APPLICATION (APPA) NO.411 OF 2023

IN
CRIMINAL APPEAL NO.246 OF 2023

Padmakar s/o Vithobaji Khewale

Vs.

The State of Maharashtra, Through Police Station Officer, Deoli, District Wardha 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. D. M. Surjuse, Counsel for applicant.

Mr. S. M. Ghodeswar, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/07/2023

1. Present application is for suspension of sentence and releasing the applicant on bail.

2. The applicant was prosecuted for the offence punishable under Section 8 of the Protection of Children From Sexual Offences Act and sentenced to suffer rigorous imprisonment for three years and fine of Rs.3000/-. The applicant is further convicted for the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.3000/-.

3. The applicant has challenged the said judgment and order of sentence on the ground that the

learned trial Court has not appreciated the evidence in proper perspective and wrongly convicted the present applicant. The learned trial Court ought to have observed that victim girl was reluctant to go with the accused, since then she was crying, but her paternal aunt forcibly sent her with the accused on his motorcycle for bringing utensils. The victim never entered in the house of the accused which is admitted by her in her cross-examination. Thus, the applicant has every chance of success in the present appeal, but appeal will take its own time for final disposal. In the meantime, if the sentence is executed, the appeal will become infructuous.

4. The said application is strongly opposed by the State on the ground that learned trial Court has rightly appreciated the evidence and convicted the present applicant, hence application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and after going through the impugned judgment it reveals that the applicant has every chance of success in the present appeal and that opportunity is to be granted to the applicant. In the meanwhile, if the sentence is executed the appeal will become infructuous. In the above circumstances, the application deserves to be allowed. Accordingly, I proceed to pass following order.

(3)

75.appa.411.2023

- (i) The application is allowed.
- (ii) The execution of the sentence is suspended till disposal of the appeal.
- (iii) The applicant is released on bail on executing P.R. bond in the sum of Rs.15,000/- with one solvent surety in the like amount.
- (iv) The applicant shall furnish his cellphone number and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate