

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

CRIMINAL APPLICATION 419 OF 2023

IN

CRIMINAL APPEAL NO.253 OF 2023

(Shubham Rama Chandane Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.B. Gandhi, Advocate for the appellant.
Shri I.J. Damle, APP for the State.
Ms Kirti Deshpande, Advocate (appointed) for respondent No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 03, 2023.

Heard.

2. Present application is filed by the applicant for suspension of sentence under Section 389 of the Code of Criminal Procedure and releasing him on bail.

3. The appellant was prosecuted for the offence punishable under Sections 354 and 509 of the Indian Penal Code and Sections 7, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act for short)

4. After appreciation of the evidence, the trial Court has held that the appellant is guilty of the offence punishable under Sections 7 and 8 of the POCSO Act and also held the appellant guilty under Section 12 of the POCSO Act and sentenced him to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/- of the offence punishable under Section 8 and two years

of the offence punishable under Section 12 of the POCSO Act and to pay fine of Rs.2000/-.

5. The appellant has challenged the said judgment and order of conviction on the ground that the evidence of the victim shows that she was tutored at the time of recording her evidence. Further ground raised by the appellant is that the trial Court has not appreciated the evidence in proper perspective and erroneously convicted the present appellant. The appellant has already undergone the sentence upto two years.

6. The appeal will take its own time for its final decision. In the meanwhile, if entire sentence is executed then the appeal will become infructuous.

7. Said application is strongly opposed by the State as well as respondent No.2 i.e. victim on the ground that if the appellant is released on bail by suspending the sentence there is every likelihood that he should be involved in a similar type of offence.

8. Having heard both the sides and on perusal of the depositions of the witnesses, it reveals that the victim girl has admitted that she was instructed before her deposition before the Court. Moreover, the appellant has already undergone the sentence of two years. The appeal will take its own time for its final decision. In the meanwhile, if sentence is executed then the appeal will become infructuous.

9. Considering the grounds raised in the appeal, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The execution of the sentence is hereby suspended till disposal of the appeal and the appellant – Shubham Rama Chandane is hereby released on bail on executing P.R. Bond of Rs.25,000/- (Rs. Twenty five thousand only) with one surety in the like amount.

(ii) The appellant shall stay out of jurisdiction of police station Old City, Akola and shall not threatened the witnesses or shall not be in contact with the witnesses who are examined before the trial Court.

10. The application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*