

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

CRIMINAL APPLICATION (APPA) NO.447 OF 2023 IN
CRIMINAL APPEAL STAMP NO.3110 OF 2023

Pankaj alias Chenu s/o Tatiya Prasad Shahu Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri C.D. Thamke, Advocate for appellant.
Shri I.J. Damle, APP for respondent no.1/State.
Ms D.I. Charlewar, Advocate appointed for respondent no.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : AUGUST 09, 2023.

This application is for condonation of delay. The appellant has challenged the judgment and order passed by the learned Additional Sessions Judge, Nagpur on the ground that as the appellant was not having sufficient means to prefer an appeal by engaging an advocate he could not prefer an appeal within time therefore delay of 142 days is caused in preferring the appeal. The delay is not an intentional one. There is sufficient and reasonable cause for condonation of delay and prays for condonation of delay.

2. The said application is strongly opposed by the learned APP as well as the learned counsel appointed for respondent no.2 on the ground that the delay is not properly explained.

3. Having heard both sides and on perusal of the application, the condonation is claimed only on the ground

that the appellant after his conviction was not able to engage an advocate. Moreover, he is shouldering the responsibility of his old parents and he has to incur the expenses for their medical treatment, therefore, he could not manage the expenses which are to be incurred to prefer the appeal. Considering the reasons mentioned in the application, the applicant has made out the sufficient and satisfactory reason for condonation of delay. Moreover, it is well settled that while considering the application for condonation of delay, the Court has to take liberal approach and pedantic approach is not to be taken. Considering the reason mentioned in the application, sufficient ground are made out, hence delay deserves to be condoned subject to the payment of costs of Rs.1,000/-. In view of that, I proceed to pass the following order:

- i. The criminal application is allowed.
- ii. The delay is condoned subject to payment of costs of Rs.1,000/-. The costs shall be deposited in the High Court Legal Services Sub-Committee, Nagpur.
- iii. Appeal be registered.

The application stands disposed of.

CRIMINAL APPLICATION (APPA) Stamp NO.3111 OF 2023

4. This is application for suspension of sentence and for releasing the appellant on bail.

5. The appellant was prosecuted for the offence punishable under Section 354A(1)(i) of the Indian Penal Code and under Sections 7 read with 8 and 12 of the Protection of Children from Sexual Offences Act. After appreciation of the evidence, the learned trial Court the appellant guilty of the offence punishable under Section 8 of the POCSO Act and sentenced to suffer rigorous imprisonment for three years and fine of Rs.2000/-, in default he shall suffer further undergo rigorous imprisonment for one month. He is further held guilty for the offence punishable under Section 354A but no separate punishment is provided in view of Section 42 of the POCSO Act.

6. It is submitted by the learned counsel for the appellant that the learned trial Court has not considered the evidence in proper perspective and erroneously convicted the appellant. The appeal will take its own time for its final decision, in the meantime, if the sentence is executed no purpose of preferring the appeal would serve. In view of that, execution of sentence be suspended and appellant be released on bail.

7. The said application is strongly opposed by the State on the ground that the learned trial Court has rightly

considered the evidence and rightly convicted the appellant. No ground is made out for suspension of sentence.

8. Having heard the learned counsel for the appellant, learned APP and learned appointed counsel and on perusal of the impugned judgment, it reveals that the appellant has made out grounds which show that he has every chance of success in the present appeal however the appeal will take its own time, in the meanwhile, if the sentence is executed, the purpose of filing of appeal would frustrate. In view of that, I proceed to pass the following order:

- i. The criminal application is allowed.
- ii. The execution of sentence awarded by the Additional Sessions Judge, Nagpur in Special (POCSO) Case No.164/2021 dated 12.09.2022 is hereby suspended pending appeal.
- iii. The appellant be released on bail furnishing PR bond in the sum of ₹15,000/- with one surety of like amount.
- iv. The appellant shall furnish his cellphone number and his address with address proof.
- v. Professional fees of learned appointed counsel for the respondent no.2 shall be quantified and paid as per Rules.

The application is disposed of.

CRIMINAL APPEAL STAMP NO.3110 OF 2023

9. Heard.
10. **Admit.**
11. Call record and proceedings.
12. Learned APP waives notice of hearing for respondent no.1/State.
13. Ms D.I. Charlewar, learned counsel waives notice of hearing for respondent no.2.
14. Appeal be placed before the Court for final hearing after preparation of paper book.

JUDGE*Wagh*

Signature Not Verified

Digitally Signed By: SURESH RAOSAHEB
WAGH
Personal Assistant to Hon'ble
Judge, High Court of Bombay, Nagpur
Bench, Nagpur.
Signing Date: 11.08.2023