

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

CRIMINAL APPLICATION (APPA) NO.487 OF 2023

IN
CRIMINAL APPEAL NO.301 OF 2023

Nandkishor s/o Ukharda Zalte

Vs.

State of Maharashtra Through Police Station Officer, Jalgaon Jamod, Buldhana

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

Court's or Judge's orders

Shri M. V. Rai, Counsel for applicant.
Shri S. M. Ghodeswar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/06/2023

1. By preferring this appeal, the appellant has challenged the Judgment and Order passed by the Additional Sessions Judge, Khamgaon, District Buldhana in Sessions Trial No.26/2014 by which the appellant is held guilty for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for the term of ten years and fine of Rs.25,000/- in default to suffer simple imprisonment for two years.

2. The appellant has challenged the said findings on the ground that learned trial Court has relied upon the sole testimony of the victim, when her testimony is not corroborated by any witnesses or any circumstantial evidence. All other witness have left the

loyalty towards the prosecution and not supported the prosecution case, then also the learned trial Court held the present appellant guilty. The appellant has a good case to argue before this Court, but it will take its own time for final decision. In the meanwhile, if the sentence is executed then the appeal will become infructuous and hence, execution of the sentence be suspended and the appellant be released on bail.

3. The said application is strongly opposed by the State on the ground that the testimony of the victim which inspires the confidence is sufficient to held the present appellant guilty therefore, the findings of the trial Court cannot be faulted with. If the appellant/accused is released on bail, he will not be available for execution of the sentence, if the appeal is disposed of against the appellant.

4. Having heard both the sides and on perusal of the impugned Judgment, it reveals that only on the basis of testimony of the victim, the appellant is convicted and other witnesses left the loyalty towards the prosecution. The trial Court has also considered the medical evidence. As per the submission of the learned Counsel Shri Rai, the medical evidence is not supportive to the allegation made by the victim girl, however, the trial Court has completely ignored the same. After going through the observation of the trial Court it is apparent

that the trial Court has held that the evidence of the prosecutrix is trustworthy and held the appellant guilty for the offence punishable under Section 376 of the Indian Penal Code. The contention raised by the learned Counsel can be considered at the time of final hearing of the appeal. Admittedly, the appeal will take its own time for final decision. In the meanwhile, if the sentence is executed then appeal will become infructuous. Considering the submission made by the learned Counsel for the appellant Shri Rai, the appellant has every chance of success in the present appeal and is having good case and the appeal will take its own time, it would be in the interest of justice to suspend the sentence. Admittedly, the appellant is not punished with imprisonment for life or imprisonment more than ten years. The appellant was on bail during the trial and he has not misused his liberty during the trial. In view of that, application is allowed. Accordingly, I proceed to pass the following order.

- (i) Criminal application is allowed.
- (ii) The execution of sentence is hereby suspended, till disposal of the appeal.
- (iii) The appellant is released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall deposit the fine amount within one month before the trial Court.

(v) The appellant shall remain present before the trial Court on 5th of every month and trial Court shall record his presence.

(vi) The appellant shall submit his mobile/phone number, along with his address with address proof, before the trial Court. Additionally, the appellant shall submit the names of his two nearest relatives along with their address with address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate