

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

CRIMINAL APPLICATION (APPA) NO.584 OF 2023

IN
CRIMINAL APPEAL NO.375 OF 2023

Nitin s/o Marotrao Sherkar

Vs.

State of Maharashtra, through Police Station Officer, Devlapar District Nagpur 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. A. M. Jaltare, Advocate for applicant/appellant.

Mr. M. J. Khan, APP for respondent No.1/State.

Mrs. Sonali Saware Gadhave, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/07/2023

1. By this appeal, the appellant has challenged the Judgment and Order of sentence passed by Extra Joint District Judge and Additional Sessions Judge, Special Court No.2 (POCSO), Nagpur. The present application is preferred by the appellant for suspension of sentence and for releasing him on bail.

2. The appellant was prosecuted for the offences punishable under Sections 452, 354, 354-(a) of the Indian Penal Code and under Section 8 of the Protection of Children From Sexual Offences Act, 2012. After appreciation of the evidence, the learned trial Court held the appellant guilty for the offence under Section 8 of the Protection of Children From Sexual Offences Act

and sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs. 5000/-. The appellant is further convicted for the offence punishable under Section 452 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs. 3000/-. The appellant is also convicted for the offence punishable under Section 354 and 354-A but no separate sentence is awarded.

3. The appellant has challenged the Judgment and order of sentence on various grounds including that the learned trial Court has not considered the evidence on record in proper perspective. The appellant has every chance of success in the present appeal. However, the appeal will take its own time for final decision. In the meanwhile, if the sentence is executed, then purpose of preferring the appeal would be frustrated.

4. It is further stated by the appellant that the learned trial Court has not considered the unnatural conduct of the victim, as well as alleged date of incident makes the story of prosecution highly improbable. The evidence is not corroborated by the other circumstances.

5. The said application is strongly opposed by the State as well as the learned Counsel for the respondent No.2 on the ground that the learned trial Court has rightly considered the evidence on record and

rightly convicted the appellant. No ground is made out to suspend the sentence and prays for rejection of the application.

6. Heard learned Counsel Mr. Jaltare for the applicant and learned APP Mr. Khan, for the State and learned appointed Counsel Mrs. Sonalil Saware Gadhave for the respondent No.2.

7. Having heard both the sides and perused the impugned judgment and the grounds of appeal. The appellant has made out the case for suspension of sentence, as he has pointed out the arguable points. Thus, there are grounds made out by the present appellant which shows that the appellant has every chance of success in the present appeal. However, the appeal will take its own time for final decision. In the meantime, if sentence is executed, then the purpose of preferring the appeal would be frustrated. However, considering the submissions made by the learned Counsel for the respondent No.2, some conditions required to be imposed on the present appellant while releasing him on bail. In view of that, I proceed to pass following order.

(i) The application is allowed.

(ii) The execution of the sentence is suspended till final disposal of the appeal.

(iii) The appellant **Nitin s/o Marotrao Sherkar** 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 not contact with the victim in any manner directly or indirectly and shall not induce them by way of promise, threat and pressurize, till the disposal of the appeal.

(v) In contravention of any of the conditions the bail granted to the appellant deserves to be cancelled.

(vi) The fees of the learned appointed Counsel for the respondent No.2 be quantified as per the rules.

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1. Heard.
2. **Admit.**
3. The learned APP waives notice for respondent No.1./State.
4. Call for record and proceedings.
5. The appeal be placed before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)