

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

CRIMINAL APPLICATION NO.599 OF 2023

IN

CRIMINAL APPEAL NO.385 OF 2023

(Aditya @ Suny Sanjay Gaikwad 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 Ram Karode, Advocate a/w Shri V.N. Morande, Advocate for the
appellant.
Shri I.J. Damle, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 15, 2023.

Heard.

2. The application is for seeking suspension of sentence and for releasing the appellant on bail.

3. The appellant was prosecuted for the offence punishable under Sections 323, 354(A) and 354(D) of the Indian Penal Code and under Sections 11(1)(i) and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for short).

4. After appreciation of the evidence, the learned trial Court held the present appellant/accused guilty and convicted for the offence punishable under Sections 323, 354(A) and 354(D) and under Section 11(1)(i) and 12 of the POCSO Act and sentenced him to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5000/- in default to undergo simple imprisonment for one month. The appellant is further convicted for the

offence punishable under Section 323 of the IPC and released him on Probation of the Offenders Act on the bond of good behaviour. The appellant has challenged the said judgment and order of sentence on the ground that the learned trial Court has not considered that there was previous quarrel between the informant and the present appellant/accused and subsequently after for this false report is lodged. The learned trial Court has acted upon the untrustworthy evidence. The appellant has every chance of success in the present appeal but it will take its own time for its final decision and if the sentence is executed then the appeal will become infructuous.

5. Said application is strongly opposed by the State on the ground that the trial Court has rightly considered the evidence on record and convicted the present appellant. If he is released on bail and the appeal is decided against his favour then it will be difficult to secure his presence to execute the sentence.

6. Having heard both the sides and after perusal of the impugned judgment, it appears that the appellant is convicted for the offence punishable under Sections 354 and 354(D) and sentenced to suffer rigorous imprisonment for three years. The appellant was on bail during the trial and he has not misused his liberty. Admittedly, the appeal will take its own time for its final decisions and in the meanwhile if sentence is executed then the appeal will become infructuous.

7. Considering the same, application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The execution of the sentence is hereby suspended till decision of the appeal.
- (iii) The appellant - Aditya @ Suny Sanjay Gaikwad is released on bail on executing P.R. Bond in the sum of 15,000/- (Rs. Fifteen thousand) with one surety in the like amount.
- (iv) The appellant shall furnish his cell phone number and detail address along with address proof and the names of two closed relatives and address with their address proof.
- (v) The appellant to pay fine, if not paid, within one week.

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2. **ADMIT.**

3. Learned Additional Public Prosecutor waives notice for the State.

4. Call for R. & P.

5. The appeal be placed before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)