

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

CRIMINAL APPLICATION (APPA) NO. 603/2023
IN
CRIMINAL APPEAL NO. 02/2023

Kafil s/o Sakil Ahmad V/s State of Maharashtra and another.

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

Court's or Judge's Order

Mr. Muzammil Husain, counsel for applicant/appellant.
Mr. I.J.Damle, APP for non-applicant No.1/State.
Ms Tejal Agre (appointed), counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 27/07/2023.

1. By this application, the applicant is seeking suspension of sentence and releasing the applicant on bail.
2. The applicant was prosecuted for the offence punishable under Sections 7 and 8 of the Protection of Children for Sexual Offences Act, 2012 (POCSO Act) and Section 452 of the Indian Penal Code.
3. After appreciation of the evidence, the learned trial Court held the applicant guilty for the offence punishable under Section 452 of the Indian Penal Code and Section 7 and sentenced to suffer rigorous imprisonment of 4 years and fine of Rs. 4,000/- of the offence punishable under Section 7 and R.I. for two

years and fine of Rs. 1000/- of the offence punishable under Section 452 of the Indian Penal Code.

4. The applicant has challenged the judgment and order of sentence on various grounds including that the learned trial Court has not considered the evidence properly and held the applicant guilty. The learned trial Court has also not considered that there is no corroboration to the victim's version as there is no eye-witness to the alleged incident. The evidence of the victim is suffering from omissions and contradictions. The applicant has every chance of success in the present appeal. However, if the sentence is executed the appeal will become infructuous.

5. Heard learned counsel for the applicant, learned APP for non-applicant No.1/State and learned counsel for non-applicant No.2/victim.

6. Learned APP and learned counsel for the victim strongly opposed the application on the ground that the learned trial Court has rightly considered the evidence on the ground and convicted the applicant, no ground is made out for suspension of sentence.

7. Perused the impugned judgment and evidence of the victim. The finding of the learned trial Court as well as the grounds of the appeal. Admittedly, at this stage, the evidence is not to be appreciated. The only

consideration is whether the applicant has made out the case to show that he has having chance of success in the present appeal. The applicant has pointed out the arguable points, from the evidence and judgment of the trial Court. Admittedly, the appeal will take its own time for its final disposal, in the meanwhile if the sentence is executed, the purpose of preferring this appeal would be frustrated.

In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) Criminal Application is allowed.
- b) The execution of the sentence is suspended till disposal of the appeal.
- c) The applicant be released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- d) The applicant shall furnish his cell phone number with address along with address proof.
- e) Fees of the learned counsel for the Non-applicant No.2 is quantified as per the Rules.

Criminal application is **disposed of**.

Criminal Appeal No. 02/2023

1. Record and proceedings is still awaited.
2. Appeal be placed before the Court after preparation of paper-book.

JUDGE