



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

CRIMINAL APPLICATION NO. 671 OF 2023
IN CRIMINAL APPEAL NO. 432 OF 2023

(Rajendra s/o Laxmichand Dhurve Vs. State of Maharashtra & Anr.)

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

Court's or Judge's orders.

Shri K.S. Motwani, Counsel for the applicant/appellant.
Shri A.M. Kadukar, Additional Public Prosecutor for non-
applicant no.1/State.

CORAM : ANIL L. PANSARE, J.
DECEMBER 11, 2023.

The applicant has filed this application under Section 389 of the Code of Criminal Procedure, 1973. The applicant has been convicted for the offence punishable under Section 376(2)(n)(f)(j)(3) of the Indian Penal Code, 1860 and under Section 6 read with Section 5(j)(ii)(1) of the Protection of Children From Sexual Offences Act, 2012.

2] Briefly stated and as could be seen from the evidence of child, the case is as follows :

3] The child's date of birth is 6/6/2002. The incident has occurred in January-2018 meaning thereby the child was 15 years and 6 months old at the time of incident. According to child, the applicant is child's relative and resides near his house. The child used to go to his house for watching TV because there was no TV in child's house.

4] On the date of the incident, the child had been to the house of the applicant for watching a TV

serial. After concluding the serial, when she was about to go back to her house, the applicant caught hold of her hand, took her to the kitchen of the house, which was under construction and pressed her mouth. The applicant sought sexual favour on the pretext of marriage to which the child refused. The applicant, however, satisfied his lust by committing penetrative sexual intercourse. Thereafter, the applicant threatened her to not disclose the incident to anyone. The child as of her own also not disclosed the incident to her mother because she thought that the mother will beat her. The applicant committed penetrative sexual assault for 4-5 times during February and March - 2018. The child got pregnant and started vomiting in the month of March - 2018. The child's mother enquired upon which the child disclosed to her mother as to what the applicant has did. The child's mother went to the applicant's house to which the applicant said that he will marry the child and requested to not disclose the incident to anyone. Therefore, neither the child nor the mother had lodged report immediately.

5] The evidence further indicates that there arose some issue as regards pregnancy and, therefore, the child approached the doctor when she was eight months pregnant. At that time, the child made a request to the applicant to perform marriage upon which the applicant refused and said to her to do whatever she wants to. Thereafter, the report came to be lodged.

6] Thus, the delay in filing report has been explained. The learned Counsel for the applicant made an

attempt to highlight certain omissions. According to him, the child has not mentioned in her statement that the applicant caught hold of her hand and took her in the kitchen and further that the applicant told her to not disclose the incident to anyone else he will beat her. This part of evidence is said to be omission.

7] The learned Additional Public Prosecutor, however, has argued that these omissions are of hardly any relevance inasmuch as the DNA report would corroborate prosecution's version. The applicant and the child are found to be the biological parents of the female child, who is born. The evidence of the child has been corroborated by her mother, particularly on the point of delay.

8] Thus, *prima facie*, the evidence appears to be overwhelming. The Hon'ble Supreme Court in the case of *Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr.* [Criminal Appeal Nos. 1331-1332 of 2023 decided on 2/5/2023] has noted that while considering application seeking suspension of sentence, if on the basis of case presented by the prosecutrix and which is accepted by the trial Court it appears that ultimately the convict has fair chance of acquittal, the sentence may be suspended. The Court noted that while undertaking exercise to ascertain whether the convict has fair chance of acquittal, what has to be looked into is something culpable. In other words, something which is very apparent or gross on the face of record on the basis of which the Court can arrive at *prima facie* satisfaction that the conviction may not be

sustainable. In the present case, the evidence is overwhelming and the chances of acquittal appears to be remote.

9] In view thereof, the application is liable to be rejected and is accordingly rejected.

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10] Registry to prepare paper-book and process the appeal for final hearing as per Rules.

(ANIL L. PANSARE, J.)

Sumit