

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

CRIMINAL APPLICATION (APPA) NO.681 OF 2023

IN
CRIMINAL APPEAL NO.435 OF 2023

Moreshwar s/o Nilkanth Kapgate

Vs.

The State of Maharashtra, through Police Station Officer, Police Station, Duggipar,
Taluka Sadak Arjuni, District Gondia

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

Court's or Judge's orders

Mr. S. A. Bramhe, Counsel for applicant.
Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/06/2023

1. Heard learned Counsel for the applicant. He submitted that the applicant was prosecuted for the offence punishable under Section 354 of the Indian Penal Code and under Sections 7 and 8 of the Protection of Children From Sexual Offences Act, 2012. The trial Court has appreciated the evidence adduced by the prosecution and convicted the present applicant of the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and pay fine of Rs.2000/- in default of payment of fine to undergo rigorous imprisonment for three years. The applicant is further convicted for the offence punishable under Sections 7 and 8 of the Protection of Children From Sexual Offences Act and

sentenced to suffer rigorous imprisonment for three years and fine of Rs.2000/-, in default of payment of fine he further undergo rigorous imprisonment for three months. It is submitted by the learned Counsel that the order of sentence and Judgment is challenged by present applicant on various grounds. The applicant has every chance of success in the present appeal, however the appeal will take its own time for final decision and if in the meanwhile, sentence is executed, the appeal will become infructuous.

2. The learned APP Mr. Damle strongly objected the application on the ground that the learned trial Court has rightly appreciated the evidence and rightly convicted the applicant and no case is made out for the suspension of the sentence.

3. Having heard both the sides. On perusal of the impugned Judgment and ground raised by the present applicant in the appeal. The applicant has made out the case that he is having every chance of success in the present appeal. Considering the same, the execution of the sentence deserves to be suspended. Accordingly, I proceed to pass following order.

(i) Application is allowed.

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

(iii) The applicant is hereby released on bail on executing PR. bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(iv) The applicant shall furnish his mobile/phone number, along with his address with address proof.

CRIMINAL APPEAL NO.435 OF 2023

1. By preferring this appeal, the appellant has challenged the Judgment and order passed in Special (POCSO) Case No.26/2018 by which the appellant is convicted for the offence punishable under Section 354 and sentenced to suffer rigorous imprisonment for three years and to fine of Rs.2000/-.

2. The appellant has not added the victim as a party.

3. Leave is granted to the appellant to add victim as a party.

4. After adding victim as a party, notice be issued to the victim and be served to the victim through Duggipar Police Station, Taluka Sadak Arjuni, District Gondia.

5. **Admit.**

(4)

27.appa.681.2023

6. The learned APP waives notice for State.
7. Call for record and proceeding.
8. The appeal be placed before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

Sarkate