

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

CRIMINAL APPLICATION (APPA) NO.749 OF 2023

IN
CRIMINAL APPEAL NO.470 OF 2023

Dilip s/o Bramhaprasad Oza

Vs.

State of Maharashtra through Police Station Officer, Police Station, Mankapur, 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. S. Tiwari, Advocate for appellant.

Mr. S. M. Ghodeswar, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 14/07/2023

1. The present application is for suspension of sentence and releasing the appellant on bail.

2. The appellant was prosecuted for the offences punishable under Sections 328, 354-A and 323 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 punishable under Section 328 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- in default to suffer rigorous imprisonment for one month. The present appellant is further convicted for the offence punishable under Section 8 of

the Protection of Children From Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.3000/- and for the offence punishable under Section 323 of the Indian Penal Code sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-.

3. The appellant has challenged the said judgment and order of sentence by raising various grounds. The contention of the appellant is that the learned trial Court has not considered the evidence on record. There was no material to show that the victim was child within the definition of Section 2(d) of the Protection of Children From Sexual Offences Act. However, the learned trial Court has not considered the same. The learned trial Court has also not considered the material evidence which came on record affecting the prosecution case and wrongly convicted the present appellant. The appeal will take its own time for final decision. In the meanwhile, if the sentence is executed, then no purpose will be served by preferring this appeal and prays for suspension of sentence and releasing him on bail.

4. The said application is strongly opposed by the State on the ground that the learned trial Court has rightly appreciated the evidence and no grounds are made out for the suspension of sentence.

5. Heard learned Counsel for the appellant. He submitted that the fine amount is already paid and he reiterated the contention. Perused the impugned judgment and the grounds of the appeal. The appellant has made out the arguable point. Admittedly, the appeal will take its own time for final decision. In the meanwhile, if sentence is executed, then the purpose of preferring this appeal will not suffice. In view of that, the Criminal Application (APPA) No.749/2023 deserves to be allowed. Hence, I proceed to pass following order.

ORDER

(i) The Criminal Application (APPA) No.749/2023 is allowed.

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

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

(iv) The appellant shall furnish his cell phone number and address with the address proof.

CRIMINAL APPEAL NO.470 OF 2023

1. Issue notice to the respondents, returnable after two weeks.
2. The learned APP Mr. Ghodeswar, waives notice for respondent No.1/State.
3. Call for record and proceedings.

(4)

19.appa.749.2023

4. Appeal be placed before the this Court, after service of respondent No.2.

(URMILA JOSHI-PHALKE, J.)

Sarkate