

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

CRIMINAL APPLICATION (APPA) NO.716/2022 in Criminal Appeal
No.557/2022

Swapnil Liladhar Khanorkar

Vs.

State of Maharashtra

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

Court's or Judge's orders

Mr. A.R.Fule, Advocate for the applicant/appellant.

Mr. A.M. Kadukar, APP for State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/06/2023

1. By this application, the applicant is seeking suspension of sentence and prays for releasing him on bail.

2. The appellant was prosecuted for offence punishable under Sections 376(2) (n) and 417 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. As per the contention of the present applicant, the applicant promised victim girl for marriage and subjected her for sexual assaults. At the relevant time, the victim was aged about 17 years and 11 months. After appreciation of the evidence, learned trial Court held that victim was minor at the relevant time and present applicant on the promise of marriage, subjected her

sexually assault and thereby held him guilty and sentenced him to suffer rigorous imprisonment for ten years and fine of Rs.10,000/- . The appellant has already paid fine amount before the trial Court.

4. Being aggrieved and dissatisfied with the judgment and order of sentence, present appeal is preferred by the appellant on the ground that the learned trial Court had not considered the evidence on record which shows that there was love affair between victim and the accused. Victim is on the verge of majority. It was the father of the victim, who declined to perform their marriage and lodged this report.

5. Heard learned counsel Shri Fule for the appellant/ applicant. He submitted that the father of the victim during his cross-examination stated that there was love affair between victim and the present appellant. He declined to perform marriage of the appellant with the victim. The marriage of the victim was performed with another person. He submitted that his cross-examination is sufficient itself and it was not false promise but, the appellant was really willing to perform marriage with the victim, as they were having love affair. Admittedly, the appeal will take its own time for final decision and if sentence is executed then appeal will become infructuous. Thus, the appellant has every chance of success in the appeal.

6. Said application is strongly opposed by the State as well as respondent no.2 - victim on the ground that the learned Trial Court had appreciated the evidence in proper perspective and submitted that if the applicant/appellant is released on bail, the Court will not be able to execute the sentence if the appeal is decided against him.

7. Having heard both the sides. Perused the evidence. From the evidence of the victim as well as evidence of her father shows that there was love affair between victim and the present appellant and there was sexual relationship between them out of the said love affection. The appellant had shown his willingness to perform marriage with the victim but, it was the father of victim who declined to perform their marriage. Thus, prima facie, it appears that the incident occurred out of love relationship. The appeal will take its own time for its final decision. No purpose would be served by keeping the appellant behind bars. Considering the appellant has every chance of success in the present appeal, execution of sentence deserves to be suspended. Accordingly, I proceed to pass the following order:

- (i) Criminal Application No.716/2022 is allowed.
- (ii) The execution of the sentence is hereby suspended till disposal of the appeal.

(iii) The appellant is hereby released on bail on executing PR bond of Rs.25,000/- (Rs. Twenty five thousand) with one solvent surety in the like amount.

(iv) The appellant shall remain present before the Trial Court on 5th of every month and the trial Court shall record his presence.

(v) The appellant shall furnish his mobile/phone number, along with his address with address proof, before the trial Court.

Criminal Application is disposed of.

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Criminal Appeal be placed for final hearing after preparation of paper book.

(URMILA JOSHI-PHALKE, J.)