

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

CRIMINAL APPLICATION (APPA) NO. 765/2022 IN
CRIMINAL APPEAL NO. 719/2022

Anil S/O Vasanta Thete
Vs
State Of Mah.Thr. Pso Ps Hudkeshwar Dist.Nagpur 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 A.C. Jaltare, advocate for the appellant.

Mr I.J. Damle, APP for the respondent No.1/State.

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

1. Heard.
2. By preferring this appeal, the appellant has challenged the judgment and order of sentence passed in Session Trial No. 115/2019, by which the appellant/accused is convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-. The present accused further convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months each and to pay fine of Rs. 5000/- each, in default to suffer rigorous imprisonment for one month.

3. Being aggrieved and dissatisfied with the judgment and order of sentence, the present appeal is preferred by the appellant on the ground that learned trial Court has not considered the evidence. The victim was major. On the date of incident i.e. 02/11/2018, the victim herself has sent the message to her friend and thereafter, she along with her friend proceeded to Jabalpur - Hyderabad Highway.

4. At the relevant time, two unknown person came their and subjected her for sexual assault. The present applicant/accused is implicated falsely, however learned trial Court had not considered the same. The appellant has every chance of success in the present appeal.

5. The appeal is preferred on 30/08/2022 as there is no progress in the appeal and the appellant is in jail. He is not sentenced with life imprisonment or the capital punishment. He is permanent resident of Kharsoli near Hanuman Temple, Nagpur. He will abide by all the conditions imposed by this Court. The appeal will take its own time for its final decision, till then, the execution of sentenced be suspended and the accused be released on bail.

6. The said application is strongly opposed by the State and learned APP submitted that the offence is of serious nature, if the applicant/accused is released on

bail, he will not be available at the time of final disposal of the appeal. He further submitted that during the trial also, appellant/accused was not on bail and therefore, the application deserves to be rejected.

7. Heard Mr A.C. Jaltare, learned advocate for the appellant as well as Mr I.J. Damle, learned APP for the respondent/State.

8. Perused the record as well as judgment of the learned trial Court. The learned trial Court has observed that most crucial piece of evidence in this case is that the victim who is examined as PW-1. She was a student at the relevant time. She has narrated about the incident. She narrated the role of the present appellant. During her evidence, the learned trial Court further observed that the testimony of the victim is corroborated by PW-3 – Girish, who was the friend of the prosecutrix, although he was not the direct witness on commission of sexual assault but his presence of the spot is very much established. On the basis of the direct evidence, the learned Trial Court has convicted the appellant.

9. Admittedly, the appeal will take its own time for final decision. The appellant is permanent resident of Kharsoli near Hanuman Temple. He is having permanent abode at Nagpur. Considering that appeal

will take its own time for its final decision and in the meantime, if the sentence is executed, the appeal will become infructuous.

10. In view of that application deserves to be allowed by imposing certain conditions.

- a) Criminal Application (APPA) No. 765/2022 is allowed.
- b) The execution of the sentenced is suspended till the disposal of the appeal.
- c) The appellant is released on bail on executing PR. bond of Rs. 25,000/- with one solvent surety of like amount.
- d) The appellant shall attend the learned trial Court on 1st day of every month and the learned trial Court shall record his presence before it.
- e) The appellant shall also furnish his detailed residential address along with the names of his two nearest relatives and their addresses along with address proof.
- f) The appellant shall also deposit the fine amount within one month.

Criminal Application is disposed of.

JUDGE