



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

CRIMINAL APPLICATION (APPA) NO.1098/2023 IN
CRIMINAL APPEAL NO. 669/2023

Niranjan Gonduji Umale .Vs. State of Maharashtra and anr.

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

Court's or Judge's orders

Mr. A. M. Tirukh, Advocate for applicant.

Mr. N. B. Jawade, A.P.P. for non applicant no.1.

Ms.S.P.Dhotre, Advocate appointed for non applicant
no.2.

CORAM : ANIL L. PANSARE, J.

DATE : 30.11.2023

By present application the applicant is seeking suspension of sentence. He has been convicted by Additional Sessions Judge, Akola in Sessions Trial No.90/2018, for the offences punishable under Sections 354-A(i) of the Indian Penal Code, 1860 and Section 7 punishable under Section 8 of the Protection of Children From Sexual Offences Act, 2012. The maximum sentence imposed is Five years rigorous imprisonment.

I have, with the able assistance of learned counsel for the parties, gone through the evidence which is relevant to decide the application under question. One of such evidence is of the victim herself. The child victim was 8 years old at the time of incident. The victim's date of birth is 10.09.2010. She was studying in the third standard. Her parents went out of the house. The accused came into house. The victim was studying in varandha. The applicant lifted her and made her lie

down on the cot. The applicant, who is 65 years old, has then lied on her person and gagged her mouth. The victim then described the act of applicant by deposing that he was jumping on her person. This act clearly indicate the attempts made by the applicant to commit rape.

The evidence further indicates that father of the victim arrived and took the applicant out of the house and while doing so, he beat the applicant. Thereafter, the applicant ran away. In the cross-examination, the applicant has brought on record that the victim's father and applicant were in talking terms since long and used to meet each other. Despite this fact having been brought on record, the counsel for the applicant contends that there was rivalry between the parties, which theory appears to be contrary to what has been brought on record by the applicant himself in the cross-examination of the victim.

PW2, father of the victim supports the prosecution version. When he entered the house, he saw that the victim was lying on the cot and the applicant was lying on her person. In the cross-examination, suggestion has been given, which is denied by the PW2 that the President of Tanta Mukti Samiti, Village Sarpancha, Vice Sarpancha and others had grievance against the applicant of having his house at the entrance of the village and that his residence should be at the rear side of the village, being belonging to Bouddha community. Accordingly, the counsel for the applicant

contends that the applicant belongs to Bouddha community and, therefore, conspiracy has been hatched against him. The applicant in cross-examination has blamed the President of Tanta Mukti Samiti, Sarpancha of the village, Vice Sarpancha and others of having lodged false report, without there being any evidence led in support. The involvement of the victim is something that would require extraordinary reason to believe that a child who is 8 years old, would be a party to the conspiracy to implead the applicant in such a heinous crime. Be that as it may, there is absolutely nothing in the evidence to disbelieve the version of the prosecution witness.

Put all together there appears overwhelming evidence against the applicant.

The Hon'ble Supreme Court in the case of **Omprakash Sahni Vs. Jai Shankar Chaudhary** reported in **(2023) 6 SCC 123** has, while dealing with the scope under Section 389 of the Criminal Procedure Code, 1973, held in paragraph 33 thus:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty

long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

Considering the above law and the evidence led before the trial Court, I do not find any merit in the application. The application is, therefore, rejected.

Registry to process the appeal for final hearing as per the rules.

(Anil L. Pansare, J.)