

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

CRIMINAL APPLICATION (APPA) 180/2022 IN
CRIMINAL APPEAL NO. 141/2022

(Sau. Reshma w/o. Ashok Ravekar Vs. State of Maharashtra & anr.)
with

CRIMINAL APPLICATION (APPA) 1008/2022 IN
CRIMINAL APPEAL NO. 789/2022

(Ritesh S/o Ganesh Kambale Vs. State of Maharashtra & anr.)

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Advocate for applicant (APPA 180/2022)
Mr. A. D. Tote, Advocate for applicant (appointed) (APPA 1008/2022)
Ms. S. H. Bhatia, Advocate (appointed) for non-applicant No.2 (APPA 180/2022)
Mr. A.M. Kadukar, APP for non-applicant No.1/State.

CORAM: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATED : 10/03/2023.

Heard.

2. Both these applications are seeking for suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure. Both applicants have been convicted in Sessions Trial No. 192/2014 vide judgment and order dated 19.11.2021. The applicant Reshma Ravekar (Application No. 180/2022) has been convicted for the offence punishable under Sections 363, 366, 372 of the Indian Penal Code and Section 16 read with Section 17 of the Protection of Children from Sexual Offences Act ('POCSO'). The Trial Court has imposed maximum sentence to undergo rigorous imprisonment for 10 years. All the sentences are directed to run concurrently. As

regards to the applicant Ritesh Kambale (Application No. 1008/2022), he has been convicted for the offence punishable under Section 376 of the Indian Penal Code and Sections 4, 6 of the POCSO Act. The maximum sentence is to undergo imprisonment for life. All sentences are directed to run concurrently.

3. Both applicants were on bail during trial. It is canvassed that the learned Trial Court failed to appreciate the evidence adduced on record resulting into convicting them. It is primly canvassed that the story as narrated by the victim is improbable having no support from other material. According to the applicants, the prosecution has failed to establish age of victim which is an important aspect. In absence of that, the prosecution under POCSO Act would not withstand. The State as well as the learned appointed counsel appearing for victim resisted the application by stating that the victim has specifically narrated the incident in her evidence. The prosecution has examined the Headmaster to establish the age. The document in the nature of school register and leaving certificate have been produced to establish the age. The learned Trial Court has correctly appreciated the material on the aspect of age. Moreover, it is submitted that sole testimony of victim is sufficient to base the conviction.

4. With the assistance of both sides, we have gone through the entire evidence in the form of oral as well as documents placed before the Trial Court. The prosecution has examined in all eight witnesses. PW-1 is the mother of victim who has initially lodged missing report as the victim

went missing on 26.06.2014. Within two days, she has lodged report stating that the applicant Reshma has enticed her minor daughter. Her evidence speaks only about the allegation against the applicant Reshma to that extent. The prosecution has mainly relied on the evidence of PW-2, victim which is always back bone in like cases. The victim has stated that initially she was introduced to some stranger by the applicant Reshma. They traveled together and went to some house. After sometime, Reshma left the place by offering her some intoxicant. She was fainted and when she regained the consciousness, she realized that she had been raped by some stranger. Thereafter, she at her own by railway, went to Shegaon, on which place she met applicant Ritesh. Since she expressed her unwillingness to return to the house, both went to the house of relative of Ritesh where they had sexual relation.

5. Primly, it is submitted that the victim was major and at her own wish, she left her house. She alleged initial sexual assault against some unknown person who has not been traced. It is submitted that initial missing report also says that victim left her house at her own. In this regard, the age of victim is crucial aspect of the case. We have gone through the evidence of PW-8 Headmaster who has produced original leaving school certificate to show that the victim's date of birth was 01.09.1991. The learned counsel appearing for applicant strongly criticized said material by contending that it is second school attended by victim. There is no material to state what was the first

school attended. Moreover, it is pointed that the school leaving certificate does not bear the reference of first school attended. It is brought to the notice that as per evidence of victim's mother, she handed over birth certificate to the Investigating Officer, but it has not been tendered. It is pointed that the Headmaster has admitted that he does not know on the basis of which documents birth entry was taken to the register. Mr. Sirpurkar, learned counsel appearing for the applicant relied on the decision of this Court in case of ***Ravi Anandrao Gulpude Vs. State of Maharashtra, through PSO P.S. Bhis, 2016 SCC Online Bomb 16146***, to contend that it is the duty of prosecution to establish the date of birth beyond reasonable doubt and the said aspect shall be carefully examined by the Court.

6. Considering the nature of evidence adduced, it requires thorough consideration as arguable points have been made out. The appeals will take considerable time for its disposal. The position would become irreversible, if the applicants would succeed in appeals. Moreover, during trial, the applicants were on bail. Having regard to all above circumstances, we are inclined to suspend the execution of sentence.

7. The learned counsel for applicant also urge to suspend the sentence in the form of fine. It is argued that the Trial Court has imposed heavy fine which is unable to meet. It is pointed that the applicant Reshma is maid servant whilst the applicant Ritesh is even unable to engage Advocate, hence, legal assistance has been

provided to him. The Supreme Court in case of ***Satyendra Kumar Mehra alias Satendera Kumar Mehra Vs. State of Jharkhand, (2018) 15 SCC 139*** has ruled that the part of sentence of fine can be suspended in befitting the case. Moreover, in view of financial capacity of applicants, insistence for deposit of fine amounts to denial of bail as they would not comply at all.

8. In view of above, both applications are allowed. Execution of sentence stands suspended till disposal of appeals.

9. In the meantime, the appellants i.e. Sau. Reshma w/o. Ashok Ravekar (Application No. 180/2022) and Ritesh S/o. Ganesh Kambale (Application No. 1008/2022) shall be released on bail on their furnishing P.R. Bond of Rs. 25,000/- each along with two sureties each in the like amount.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
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