



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

CRIMINAL APPLICATION (APPA) NO.1063/2023 IN
CRIMINAL APPEAL NO. 656/2023

Shaikhji alias Pintu Shaikh Bashir .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. Y. J. Sheikh, Advocate for applicant.
Mr. Palshikar, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : 30.11.2023

Heard.

2. By the present application, the applicant is seeking suspension of sentence. He has been convicted by Additional Sessions Judge, Amravati in Sessions Case No.49/2018, for the offences punishable under Sections 376 (2) (n) and 506 of the Indian Penal Code, 1860. The maximum sentence imposed upon the applicant is ten years rigorous imprisonment.

3. I have gone through the evidence led before the trial Court for the purpose of the present application. The evidence of victim indicates that her date of birth is 16.06.1990. The incident has occurred in July, 2017. Thus, she was 27 years old at the relevant time. The applicant was 19 years old. The evidence of victim indicates that her father left her at house of the applicant who is her cousin brother. The applicant committed sexual intercourse with the victim on multiple occasions. The victim was taken

back to her house. She did not disclose the incident to her father for about 4-5 months. She disclosed the incident only upon coming to know that she is pregnant. The victim has, while giving history before the Medical Officer (PW3) has stated that the victim and the applicant fell in love with each other and had sexual relations. It further appears from the evidence of witnesses that the fetus was aborted. The DNA report however indicates that the applicant was biological father of the child.

4. Put all together, prima facie, this incident appears to be of consensual relationship. When inquired, the counsel for the applicant submits that there are no criminal antecedents. The applicant is a young aspirant.

5. Considering the nature of evidence, in my view, the applicant has an arguable case. It is unlikely that the appeal will be heard in near future. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) The execution of sentence imposed upon the applicant by Additional Sessions Judge, Amravati in Sessions Case No. 49/2018, for the offences punishable under Sections 376 (2) (n) and 506 of the Indian Penal Code, 1860. is hereby suspended.

(iii) Applicant – Shaikhji alias Pintu Shaikh Bashir, shall be released on bail on he furnishing P.R. bond in the sum of

Rs.50,000/- with one or two sureties in the like amount before the trial Court.

(iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.

The application is disposed of.

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

(Anil L. Pansare, J.)

Kahale