



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

Criminal Application [APPA] No.24 of 2024

in

Criminal Appeal No.9 of 2024

Radha Brijmohan Tiwari

vs.

State of Maharashtra and another

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. R.M. Daga, Advocate for the Applicant/Appellant.

Mr. H.D. Dubey, A.P.P. for Non-Applicant/Respondent No.1.

Mrs. Seema Dhotre, Advocate (appointed) for Non-Applicant/Respondent No.2.

CORAM : M.W. CHANDWANI, J.

DATE : 26th MARCH, 2024.

The applicant seeks suspension of substantive sentence passed by the learned Special Judge, Nagpur in Special Case No.41/2017, whereby the applicant has been convicted for the offence punishable under Sections 366, 370 and 343 of the Indian Penal Code (I.P.C.) and sentenced her to suffer five years, seven years and one year respectively, apart from imposing of the fine on each count.

02] Heard Mr. Daga, learned Counsel for the applicant as well as Mr. Dubey, learned Additional Public Prosecutor for the State, who is assisted by Mrs. Dhotre, learned Counsel appearing on behalf of non-applicant No.2.

03] It is contended on behalf of the learned Counsel for the applicant that the applicant is a lady. The only role attributed to the applicant is that the victim was made to stay at the house of the applicant at the behest of convict Vinod and thereafter the victim was brought back to the house of Vinod. According to him, no major role

has been played by the applicant. He submits that there are no ingredients to attract Section 370 of I.P.C. in the case in hand against the applicant. According to him, the applicant has good case on merits. Hence, he seeks suspension of substantive sentence.

04] *Per contra*, the learned A.P.P., on the other hand, submitted that the applicant not only kept the victim girl with her at the behest of convict Vinod, but also she accompanied with convict Vinod to Rajasthan for the purpose of selling the victim girl for marriage. Therefore, he submitted that here is a good case on merits and sought rejection of the application.

05] Perused the record. Convict Vinod exploited the victim sexually and even by showing knife to her, he raped her continuously and, thereafter, he kept the victim girl in the house of the present applicant and tried to sell the victim girl at Rajasthan for the purpose of marriage. The role assigned to the present applicant is that at the behest of convict Vinod, she kept the victim girl at her house for five days and she accompanied with the main convict Vinod to Rajasthan. The applicant has been acquitted for the offence punishable under Section 366-A of I.P.C. and has been convicted for the offence punishable under Section 370 of I.P.C., which speaks about recruiting, transporting, harbouring, transferring or trafficking for the purpose of exploitation. It is the submission of the learned Counsel for the applicant that Section 370 of I.P.C. will not be applicable, as the applicant did not commit any act, which constitutes an offence under Section 370 of I.P.C.

06] The applicant is a lady. She was on bail during the trial. She did not misuse the liberty. The sentence is for a fixed term of seven years. The hearing of appeal may take considerable time.

07] Considering the above said aspect, a case is made out for suspension of sentence. Hence, the following order :

ORDER

- I. The application is allowed.
- II. Pending the appeal, the substantive sentence of the applicant shall remain suspended.
- III. The applicant shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the like amount, before the trial Court.
- IV. The applicant shall not indulge herself in similar type of offence.
- V. The applicant shall remain present in the Court at the time of final hearing of appeal.
- VI. The Secretary to the High Court Legal Services Sub-Committee, Nagpur to quantify and release the profession fees to the learned Counsel appointed for non-applicant No.2, as per rules.

JUDGE