



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

CRIMINAL APPLICATION (APPA) NO.38/2024

IN

CRIMINAL APPEAL NO.786/2023

(Ghanshyam Ramsa Uikey Vs. State of Maharashtra and another)

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

Court's or Judge's orders

Mr. Rajnish Vyas, Advocate for the applicant/appellant.
Mr. Nikhil H. Joshi, A.P.P. for non-applicant/respondent No.1/State.
Ms. Sonali Saware-Gadhawe, Advocate (appointed) for
non-applicant/respondent No.2.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.

ORDER RESERVED ON: 9.7.2024.

ORDER PRONOUNCED ON: 18.7.2024.

ORDER (*Per Mrs. Vrushali V. Joshi, J.*)

Heard.

2. The applicant has preferred an appeal before this Court taking an exception to the judgment and order dated 10.11.2023 passed in Atrocity Special Case No.41/2017 by the Special Judge, Nagpur thereby convicting the applicant for commission of offence punishable under Sections 363, 366 and 376(2)(j)(1) of Indian Penal Code along with application for suspension of sentence.

3. The non-applicant No.2-victim is resident of Seoni, Madhya Pradesh and belongs to Gond caste. She stated to have studied upto 10th class and suffering from mental illness. It is alleged that prior to one month of registration of offence she met with one person whose name she was not knowing took her from Seoni to Khumari, Tahsil Ramtek at the house of accused No.1 i.e. Vinod. It is alleged that said accused No.1 kept the victim at his house and tied her with iron chains

attached to leg of sofa, by showing knife had given threat to kill the prosecutrix and he also committed rape on her during her stay in said house. This applicant is accused No.3. According to prosecution in the year 2017 the victim was alone on the road, she met with the present applicant, who took her on scooty with him in forest and committed rape on her and thereafter took victim to the house of accused No.1.

4. The applicant has faced the trial and the trial Court has convicted this applicant for commission of offence punishable under the offences, as stated above. It has directed the applicant to undergo imprisonment for a period of three years and fine of Rs.2,000/- in default imprisonment of six months for the offence punishable under Section 363 of I.P.C., for offence punishable under Section 366 of I.P.C. imprisonment for five years and fine of Rs.3,000/- in default imprisonment of six months and for offence punishable under Section 376(2)(j)(1) of I.P.C. to undergo rigorous imprisonment for life and fine of Rs.5,000/-, in default rigorous imprisonment of one year.

5. The learned Advocate for the applicant has stated that the evidence adduced by the prosecution was not considered in proper perspective by the trial Court. There is every possibility that the appeal may be decided in favour of the present applicant who is quite young. He was on bail during the trial. Considering the evidence against the present applicant, he has prayed to suspend the sentence and release the applicant on bail.

6. The learned A.P.P. opposed the application stating that heinous offence is committed by this applicant. The victim has identified him. She has mentioned his name. He

has dropped the victim to the house of accused No.1 and accused No.1 has committed atrocities on her every day. Therefore, he has prayed to reject the application.

7. Heard both sides. Perused the record.

8. The learned Advocate for the applicant took us through the evidence of witnesses. The F.I.R. shows that the victim was not knowing accused No.1. She has not mentioned his name in F.I.R. On perusal of evidence of P.W.1 victim it is seen that the victim has stated the name of this applicant in clear terms. She was not acquainted with him. She has mentioned the name of applicant as "*Ghanshyam*", whatever she has stated in her evidence against the petitioner is brought on record as an improvement. She has mentioned about the rape committed by the applicant and he took her on scooty but it is brought on record as an improvement. He was not known to her. Therefore, question arises to see whether the identification parade was required to be conducted? Though witness Nos.7 and 8 have stated his name and has stated that he dropped the victim in the house of accused No.1 but it is required to see how they were knowing applicant. Further identification parade is not conducted in this case. Moreover, he is convicted for offence under Section 363 of I.P.C. As she is major this section will not be attracted. Arguable case is made out by the applicant. Instead of keeping him in jail during the pendency of appeal, the sentence is suspended against the applicant. Hence the following order:-

(i) The Criminal Application stands allowed and disposed of.

(ii) The substantive sentence awarded against the present applicant/appellant in Atrocity Special Case

No.41/2017 by learned Special Judge, Nagpur on 10.11.2023 stands suspended only against the present applicant/appellant till the final hearing and disposal of the present appeal.

(iii) Applicant Ghanshyam Ramsa Uikey be released on P.R bond of Rs.50,000/-(Rs. Fifty thousand only) with two solvent sureties of Rs.25,000/-(Rs. Twenty five thousand only) each.

(iv) The applicant shall not commit any criminal activity.

(v) The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeals, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

(vi) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(vii) Bail to be furnished before the trial Court.

(MRS.VRUSHALI V.JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)