



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

CRIMINAL APPLICATION [APPA] NO.217 OF 2024

IN

CRIMINAL APPEAL NO.114 OF 2024

[Arjun Parasram Barde .vs. State of Maharashtra, through PSO, PS Buldhana, Dist. Buldhana]

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

Court's or Judge's orders

Mr. K.G. Rathi, Advocate (Appointed) for Applicant-Appellant,
Ms. Kavita Bhondge, APP for Respondent-State.

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CORAM : M.W. CHANDWANI, J.

DATE : 27/02/2024.

By this application, the applicant is seeking suspension of sentence pending appeal. The learned Special Court, Buldhana, by its order dated 21.09.2023 recorded the judgment and order of conviction and sentence.

2. The appellant was convicted and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- for offence punishable under section 363 of the Indian Penal Code. The appellant was also convicted and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- for offence punishable under section 366-A of the Indian Penal Code. Likewise, the appellant was further convicted and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- for offence punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012.

3. It is the contention of the learned counsel for the appellant that the learned trial court did not appreciate the facts in proper perspective. The victim was aged of understanding. She did not raise any alarm while taking away by the appellant. The appellant is convicted for fixed term of two years. After conviction the applicant is in jail since last five months. The fine amount is already deposited. The appellant has good case on merit.

4. Per contra, the learned APP objected the application on the ground that there is finding of the Special Court regarding the guilt of the appellant. The appellant has no case on merit. Therefore objected the application.

5. With the able assistance of the learned counsel for the appellant and the learned APP for the respondent-State, I have gone through the judgment and depositions. It appears that the victim-girl is aged about 15 years which is age of understanding. In wake of the decision of the Apex Court in the case of *S. Varadarajan .vs. State of Madras, (1965) 2 Cri.L.J. 33*, whether the acts of the appellant would fall under Section 363 of the Indian Penal Code is the question in this appeal. An arguable case is made out. The appellant is convicted for fixed term of two years. The appeal may not be heard in near future. In the case of acquittal, the position will be reversible. Considering the period of sentence, the case is made out for suspension of

sentence. Hence, the following order :

ORDER

(i) Pending appeal, the substantive sentence passed in Special Case No.29/2020 shall remain suspended. The appellant shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(ii) The appellant shall appear before this court at the time of final hearing of the appeal.

(iii) The application is accordingly allowed and disposed of.

(iv) The fees of the learned counsel appointed on behalf of the appellant be quantified as per the rules.

(M.W. Chandwani, J.)