



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

CRIMINAL APPLICATION (APPA) NO.360 OF 2023
IN
CRIMINAL APPEAL NO.214 OF 2023

Abdul Haris Abdul Gaffar

Vs.

State of Maharashtra, Through Police Station Officer, Police Station
Wardha (City) District, Wardha 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. Mohan Vishnu, Advocate h/f Mr. S. K. Wankhade, Advocate for
appellant.

Mr. A. R. Chutke, APP for respondent No.1/State.

Ms. Apurva D. Kolhe, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/02/2024

1. The appellant has filed the present application under Section 389 of the Code of Criminal Procedure for suspension of sentence and for grant of bail.

2. The appellant has been convicted by the learned Extra Joint Additional Sessions Judge, (Special Court), Wardha for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and the punishment awarded is rigorous imprisonment for three years and fine of Rs.3,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 8 of the Protection of

Children from Sexual Offences Act, 2012. The appellant is also convicted for the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.3,000/- and in default to suffer for three months.

3. Learned Counsel for the appellant submitted that the learned trial Court has not considered that alternate punishment is to be provided and erroneously convicted the appellant under both the provisions. He further submitted that the learned trial Court has not appreciated the evidence in proper perspective and erroneously convicted the appellant. The appeal will take its own time for final decision. In the meantime, if the sentence is executed, the appeal will become infructuous.

4. Learned APP and appointed Counsel objected the application on the ground that appeal is devoid of merit and application deserves to be rejected.

5. Considering the reasoning assigned by the learned trial Court and considering the fact that the punishment is awarded under both the provisions though there is a provision of alternate punishment in view of Section 42 of the Protection of Children from Sexual Offences Act and the appellant has pointed

out that he has some arguable points and fair chances of acquittal. The application deserves to be allowed. In view of that, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence is suspended till disposal of the appeal.
- (iii) The appellant is released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

6. The fees of the appointed Counsel be quantified as per the rules.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)