



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

CRIMINAL APPLICATION (APPA) NO. 336 of 2024

IN

CRIMINAL APPEAL NO.179 OF 2024

Suraj Rajesh Wankhede

Vs.

State of Maharashtra, through PSO, PS Nandanwan, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. Yash Venkatraman, Advocate for appellant.

Ms S.V. Kolhe, APP for State.

CORAM : G.A. SANAP, J.

DATE : 26.06.2024

Heard learned Advocate for the appellant and
learned APP for the respondent/State.

2. This is an application filed by the
appellant/accused for suspension of substantive sentence
and grant of bail.

3. The appellant/accused has been convicted by the
learned Sessions Judge Nagpur in Special Criminal Case
(POCSO) No.325/2018 vide judgment and order dated
04.04.2022 for the offences punishable under Sections
376(2)(n) of the Indian Penal Code (for short "I.P.C.")
and Section 6 of the Protection of Children from Sexual
Offences (for short "POCSO") Act, 2012 and is
sentenced to suffer rigorous imprisonment for 10 years

and to pay a fine of Rs.25,000/-, in default, he shall suffer further imprisonment for three months.

4. Learned Advocate for the appellant submitted that there is no evidence to prove the birth date of the victim and also there is no concrete evidence to prove that the appellant is a biological father of the child. Learned Advocate for the appellant took me through the record of birth date and DNA report to make good his submission. Learned Advocate submitted that there are various procedural lacuna while preparing the DNA report. Learned Advocate submitted that the accused has been in jail for last three years and therefore, his sentence is required to be suspended.

5. Learned APP submitted that witness, who has conducted the DNA test has been examined. Learned APP pointed out that report of DNA is at Exh.46 and expert has opined that the victim and the accused are the biological parents of the child.

6. It is seen that the certified copy of birth certificate issued by Municipal Corporation was collected during the course of investigation to find out birth date of the victim. The certificate has been admitted in evidence. On the basis said certificate it has been proved that victim was child as defined under the Protection of Children

from Sexual Offences Act, 2012. It is undisputed that the victim gave a birth to the child. The victim has categorically stated about the biological father of the child. The DNA report has confirmed that the appellant is the biological father of the child. Learned Sessions Judge, Nagpur has considered the entire evidence and has come to a conclusion that the evidence is sufficient to prove the charge.

7. On going through the record and proceedings and particularly the fact that the sentence is of 10 years rigorous imprisonment for such serious offence it may not be desirable to suspend the sentence. Number of such appeals are pending. In my view, therefore, no case has been made out for suspension of sentence and grant of bail to the accused. Accordingly, the application is **rejected**.

8. Criminal Application (APPA) No.336/2024 stands **disposed of**.

9. Record and proceedings has been received. Office shall expedite the paper book.

(G. A. SANAP, J.)