



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

CRIMINAL APPLICATION (APPA) NO. 649/2023 IN
CRIMINAL APPEAL NO. 414/2023

(Sayyad Nazim Sayyad Abdul Kayum Vs. State of Maharashtra and anr.)

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

Court's or Judge's orders

Mr. S.V. Sirpurkar, Advocate for applicant.
Mr. J.Y. Ghurde, APP for non-applicant No.1.
Ms. A. Kolhe, Advocate for non-applicant No.2.

CORAM: VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 19/01/2024.

Heard.

2. This is an application seeking suspension of execution of sentence passed by the learned Special Judge, Khamgaon in Special Case No. 8/2017, whereby the Trial Court has convicted the applicant/appellant for the offence punishable under Section 376(2)(I) of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The applicant was sentenced to undergo imprisonment of life along with fine. The applicant was on bail during trial.

3. It is applicant's contention that the Trial Court utterly failed in convicting the applicant without evidence. It is submitted that the prosecutrix as well as her mother did not support the prosecution case. Scientific evidence is not available, however the Trial Court convicted the applicant on the basis of First Information Report, statement under Section 164 of the Code of Criminal Procedure and history stated by the Medical Officer.

4. With the assistance of both, we have examined the entire material. It was the victim's case that on the day of occurrence, while she was proceeding to buy commodity, the accused accosted her and forcibly raped her by tearing her clothes. On the day of occurrence itself, she has lodged report. The prosecutrix has not supported the prosecution case nor identified accused in the Court. Rather even she has not stated about the occurrence in her evidence. The mother of the prosecutrix also turned hostile. The evidence of scientific analysis in the form of DNA and chemical analysis report are not available for the assistance of the prosecution. The applicant has made out arguable case. It is informed that the entire fine amount has been deposited.

5. Having regard to the above material, we have no hesitation in suspending the sentence during the pendency of appeal. Hence, following order:-

(I) Application is allowed and disposed of.

(II) Execution of substantive sentence passed by the learned Special Judge, Khamgaon in Special Case No. 8/2017 shall stand suspended on furnishing PR Bond of Rs. 25,000/- with one surety in the like amount.

(III) The Trial Court shall ensure that the entire fine amount has been deposited before issuance of release order.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)