



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

CRIMINAL APPLICATION (APPA) NO.1132 OF 2023 IN
CRIMINAL APPEAL NO.700 OF 2023

Pandurang alias Pandya s/o Gajanan Pachare 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.

Shri Sunil Kulkarni, Advocate for appellant.
Shri A.M. Kadukar, APP for respondent no.1/State.
Ms Shubhda Phaltankar, Advocate (appointed) for respondent
no.2.

CORAM : M.W. CHANDWANI, J.
DATE : JANUARY 12, 2024.

The appellant seeks suspension of substantive sentence awarded by the learned Extra Joint Additional Sessions Judge (POCSO), Wardha in Special (Ch.Act) Case No.22/2017, whereby the learned Additional Sessions Judge passed.

2. By order dated 24.04.2023 the learned Additional Sessions Judge convicted the appellant and sentenced him to suffer rigorous imprisonment for five years for the offence punishable under section 6 read with section 18 of the Protection of Children from Sexual Offences Act with fine of Rs.5000/-. The appellant is also sentenced to suffer rigorous imprisonment for three years under section 450 of the Indian Penal Code with fine of Rs.3,000/-.

3. Heard learned counsel for the appellant as well as learned APP assisted by learned appointed counsel for respondent no.2.

4. It is submitted on behalf of the learned counsel for the appellant that the appellant has been falsely implicated in this case. The mother of victim was having extra marital relations with the appellant. Due to differences between them there was quarrel with the mother of the victim and therefore this false report has been lodged against him. It is contended that the medical evidence shows that no penetrative sexual assault was committed by the appellant, however the appellant has been convicted for committing penetrative sexual assault on the victim, a minor girl. It is also contended that the appellant is sentenced for shorter period and appeal will take considerable time for its disposal and therefore pending appeal the appellant shall be released on bail by suspending substantive sentence.

5. *Per contra*, learned APP, assisted by learned appointed counsel for the respondent no.2, vehemently submitted that one Court has given findings against the appellant and the record shows that the appellant has committed the offence. Evidence is clinching and there is no chance to succeed in the appeal. Hence, sought rejection of the application.

6. With the able assistance of the learned counsel for the appellant as well as learned APP assisted by learned appointed counsel I have scanned the evidence. Though the appellant was charged for penetrative sexual assault but the medical evidence suggests hymen of the victim was intact. Cross-examination goes to show that the defence of the appellant was that he was having relations with the mother of the victim and because of

quarrel between the appellant and mother of the victim, the present report came to be lodged by the mother of the victim. Even in Chemical Analyst report and DNA report there is no incriminating material against the appellant. Arguable case is made out. The appellant has been convicted for fixed term of five years. The fine amount has already been paid. Considering the totality of the case, a case is made out for suspension of sentence. Hence, this order.

7. Pending appeal, substantive sentence passed by the learned Extra Joint Additional Sessions Judge (POCSO), Wardha in Special (Ch.Act) Case no.22/2017 dated 24.04.2023 against the appellant shall remain suspended.

8. The appellant - Pandurang alias Pandya S/o Gajanan Pachare shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

9. The appellant shall remain present before this Court as and when directed.

10. Professional fees of the learned appointed counsel for respondent no.2 be quantified and paid, as per Rules.

11. The application stands disposed of.

JUDGE

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