

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

**CRIMINAL APPLICATION (APPA) NO.607/2024**

**IN**

**CRIMINAL APPEAL NO.672/2019**

(Ravi @ Ramesh S/o Sanju @ Dastgir Bhosle Vs. State of Maharashtra)

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for the applicant.  
 Mr. S.S. Doifode, A.P.P. for the non-applicant/State.

**CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.**

**DATE OF RESERVING THE ORDER: 25.7.2024.**

**DATE OF PRONOUNCING THE ORDER: 31.7.2024.**

**ORDER** (Per Mrs. Justice Vrushali V. Joshi)

The applicant has filed this application for suspension of sentence and grant of bail.

2. Prosecution case is that all the five accused persons have committed dacoity in the house of one B on 18.1.2013 at about 10 p.m. When the family of the victim was watching television, they heard barking of dogs. One B came out of the house to see why the dogs are barking. He went under the mango tree. Three persons rushed on his person and started assaulting him by fist blows and sticks in their hand. Other two to three persons joined them and also started beating by fist blows. They broke the torch and dragged him inside the house. When his wife and son tried to save him, assailants started beating them by means of stick, fist and blows and demanded valuables by uttering "paise nikalo, sona chandi do" and they instructed the prosecutrix to open the boxes. After that the first informant heard the cries of his daughter "Bapre Melo". Those persons dragged his daughter out of house, who was screaming for help. They took out his

daughter out of the house and confined the complainant, his wife and son inside the house. He heard cries of his daughter for help like *Wachwa - Wachwa* for considerable period. After one and half hours his daughter - victim came along with Chitapur villagers and by opening the door set the complainant free. Thereafter the first informant enquired with his daughter. She narrated about rape committed by all the accused persons inside the house and outside the house. The F.I.R. was lodged and the crime is registered.

3. The applicant has filed the appeal challenging the judgment and order dated 9.8.2019 passed by the Additional Sessions Judge, Nagpur in Sessions Trial No.361/2014 thereby sentencing the applicant to suffer maximum imprisonment for life along with other sentence for the offence punishable under Sections 376(2)(g), 395 read with 397, 342, 452, 504, 506 and 427 of I.P.C.

4. The applicant was arrested in present crime on 7.5.2014 and since then he is in jail. Till now he has undergone more than 10 years of imprisonment without remission.

5. The conviction for the offence punishable under Sections 395 and 397 is concerned, the applicant is convicted for imprisonment for ten years and till date the applicant has undergone imprisonment of more than ten years. The applicant is challenging the imprisonment for the offence punishable under Section 376(2)(g) of I.P.C.

6. The learned Advocate for the applicant has stated that the allegations are made that all the five accused persons have committed rape on victim at the time of committing dacoity. This applicant/accused is not involved in said

offence. He has already undergone the punishment for offence punishable under Sections 395 and 397 I.P.C. As his involvement is not there for the offence punishable under Section 376(2))(g) as per the evidence of the prosecution and as per the D.N.A. Report, the involvement of the applicant in said offence is not proved. Therefore, he has prayed to release him on bail during the pendency of appeal.

7. The learned A.P.P. opposed the application stating that serious allegations about committing rape on a victim by all the accused persons are there, applicant's presence was there and the act of this applicant is specifically mentioned by the victim. Therefore, he has prayed to reject the application.

8. We have gone through the evidence. The evidence of P.W.1 prosecutrix shows that she has specifically mentioned the role of each accused and she has identified all the accused persons during identification parade and in Court also. It is pointed out by the learned Advocate for the applicant that the victim has stated in her evidence that 5<sup>th</sup> accused i.e. present applicant presumed her dead and poured water on her from the drum. She has specifically identified 5<sup>th</sup> accused and stated that he did not commit sexual intercourse with her. The learned Advocate for the applicant took us to the D.N.A. Report which is at Exh.153. D.N.A. Report was found negative in respect of this applicant. P.W.1 has said at one place that present applicant has not committed rape on her. Identity is disputed as all the accused had tied scarf on their mouth.

9. Considering the evidence of prosecutrix and as the D.N.A. Report of this applicant is in negative, the involvement of this applicant is doubtful. The prosecution has not taken the plea that this applicant has abetted or helped in the

commission of offence under Section 376(2)(g) of I.P.C. The applicant has already undergone more than 10 years imprisonment for the offence punishable under Sections 395 and 397 of I.P.C. and now he is in jail. The involvement of the applicant in offence punishable under Section 376(2)(g) I.P.C. is also doubtful. Considering the role played by this applicant and as the involvement of applicant in said offence is doubtful, during the period of appeal it is not desirable to keep the applicant in jail. Hence we proceed to pass the following order:-

### **ORDER**

- (i) The Criminal Application stands allowed and disposed of.
- (ii) The substantive sentence awarded against the applicant /appellant in Sessions Trial Case No.361/2014 to the applicant by learned Additional Sessions Judge, Nagpur on 9.8.2019 stands suspended till the final hearing and disposal of the Criminal Appeal No.672 of 2019.
- (iii) Applicant Ravi @ Ramesh S/o Sanju @ Dastgir Bhosle be released on P.R bond of Rs.50,000/-(Rs. Fifty thousand) with two solvent sureties of Rs.25,000/- (Rs. Twenty five thousand) each.
- (iv) The applicant shall not commit any criminal activity.
- (v) The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

(vi) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(vii) Bail to be furnished before the trial Court.

(MRS.VRUSHALI V.JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)