



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

Criminal Application [APPA] No.897 of 2023

in

Criminal Appeal No.133 of 2023

Akash Ashok Khode

vs.

State of Maharashtra, through P.S.O. Patur, District Akola and another

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. R.M. Daga a/w Mr, Bhavin Suchak, Advocates for the Applicant.

Mrs. Hemlata Dhande, A.P.P. for Non-Applciant No.1.

Ms. Parita Lakhani, Advocate for Non-Applciant No.2.

CORAM : M.W. CHANDWANI, J.

DATE : 10th APRIL, 2024.

By this application, the applicant seeks suspension of sentence passed in Spl. Child Prot. Case No.152 of 2018 by the learned Special Judge, Akola.

02] The applicant has been convicted for the offence punishable under Section 377 of Indian Penal Code read with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to suffer rigorous imprisonment for 20 years and to pay fine of Rs.10,000/-.

03] It is contended on behalf of the learned Counsel for the applicant that there is no ocular evidence including the evidence of the victim about unnatural sex/intercourse. The trial Court, by relying only on the DNA report holding that anal swab taken from the person of the victim were matching with the blood of the applicant, has convicted the applicant and sentenced him to suffer rigorous

imprisonment for 20 years. He further submits that neither there is evidence of proper sampling and nor the chain of custody of sample collected for DNA has not been established by the prosecution. According to him, the applicant has a good case on merit and there is every chance that the applicant will succeed in appeal. He further submits that when there is no direct evidence on the alleged carnal intercourse, the trial Court ought not to have relied on the DNA report for recording the conviction. To buttress his submissions, he seeks to rely on the case of **Prakash Nishad alias Kewat Zinak Nishad vs. State of Maharashtra**¹, wherein the Supreme Court observed that if delay in sending the samples is unexplained, possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out.

04] The learned Additional Public Prosecutor for the State objected the application on the ground that there is conclusive evidence in the form of DNA report, which clearly suggests the act of carnal intercourse by the applicant with the victim. She submits that the trial court has rightly relied on the DNA report and convicted the applicant. According to her, in absence of direct evidence, conviction can be based solely on the DNA report. To buttress her submission, she seeks to rely on the decision in the case of **Salim Ahmed s/o habibul Rahaman Ansari vs. The State of Maharashtra**², where the coordinate Bench of this Court, after appreciating the evidence on the collection of blood samples, has held that once the procedure of collection of blood samples and their submission to the laboratory for analysis is absolutely proper and there was no evidence as to tampering of the same, the DNA report needs to be accepted.

1 2023 SCC OnLine SC 666

2 Criminal Appeal No.463/2017

05] Having heard the learned Counsel for the respective parties and having gone through the record including the judgment and orders, it reveals that none of the witnesses, including the victim, has supported the prosecution case over the unnatural sex by the applicant. The learned trial Court only relying on the DNA report convicted the applicant for the aforesaid offences.

06] The record shows that sample was collected in the form of anal swab from the victim on 29/09/2018. i.e. the next day of the incident. Even, the Doctor, who collected the blood samples of the applicant and the victim, has not been examined. It appears that the samples were received by the laboratory on 13/10/2018. All these facts require consideration on merit of the appeal. The applicant is in jail since the date of conviction. In case, if the applicant is succeeded in the appeal, the position will be irreversible. A case is made out for suspension of sentence and grant of bail. Hence, the following order :

ORDER

- I. The application is allowed.
- II. Pending the appeal, the substantive sentence passed in Special Child Prot. Case No.152/2018 by the Additional Sessions Judge, Akola on 14/12/2022 is hereby suspended.
- III. The applicant shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with one solvent surety in the like amount, before the trial Court.
- IV. The applicant shall remain present on the date of final hearing of the appeal.

- V. The applicant shall not visit village Patur, District Akola till disposal of the appeal.
- VI. The application is disposed of in the aforesaid terms.

JUDGE

**sandesh*