



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

CRIMINAL APPLICATION (APPA) NO. 1050 OF 2024 IN
CRIMINAL APPEAL NO. 608 OF 2024

Nitesh s/o Shankar Moon Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. J.R. Damodar (Dongre), counsel for the applicant/appellant.
Ms. Kavita Bhongde, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/10/2024.

1. By preferring this application, the applicant/appellant is seeking suspension of sentence and releasing him on bail.
2. Learned counsel for the appellant submitted that, appellant was prosecuted of the offence punishable under Sections 323, 354, 504 and 506 of the Indian Penal Code, 1860, and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).
3. Learned counsel for the appellants submitted that after recording the evidence and appreciation of the evidence, learned Special Court has convicted the present appellant of the offence punishable under Section 354, 323 of the Indian Penal Code, 1860 and Sections 8 and 12 of the POCSO Act. The appellant is convicted the offence under Section 8 and sentenced to suffer R.I. for three years and fine of Rs.2000/-, in default, R.I. for one month.

3. Learned counsel for the applicant further pointed out from the impugned judgment that the learned trial Court has not considered the evidence in proper perspective and he has many arguable points in the present appeal, but the appeal would take its own time for its final decision. In the meantime, if the sentence is executed, the appeal would become infructuous.

4. The learned APP strongly opposed the present application on the ground that the appeal itself is devoid of merits and liable to be dismissed.

5. Having heard the learned counsel for the applicant and the learned APP, perused the impugned judgment. Considering the fact that a limited period sentence is imposed on the present applicant as well as the appeal would take its own time for its final decision, and in the meantime, if the sentence is executed, the appeal would become infructuous. Moreover, the applicant has also made out the arguable points, which can be considered while considering the appeal. In view of that, the execution of sentence deserves to be suspended.

6. In view of that, I proceed to pass following order:

- (i) The execution of sentence imposed in Special (POCSO) Case No. 46/2021 dated 29/08/2024 is hereby suspended till disposal of the appeal.

- (ii) The applicant shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

7. The criminal application (APPA) No. 1050/2024 is disposed of.

CRIMINAL APPEAL NO. 608 /2024

1. Heard.
2. **Admit.**
3. Learned Additional Public Prosecutor waives service of notice on behalf of respondent.
4. Call for record and proceedings.
5. Appeal be listed before this Court after preparation of paper-book.

[URMILA JOSHI-PHALKE, J.]