



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

CRIMINAL APPLICATION (APPA) NO.1283 OF 2023

IN

CRIMINAL APPEAL NO.797 OF 2023

[Akash Dilip Waghande ..Vs.. The 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 order

Mr A. A. Choube, Advocate for Applicant/Appellant in Cri. Appeal No.797/2023.
Mr S. S. Sohoni, Advocate for Applicant/Appellant in Cri. Appeal No.229/2024.
Mr A. Gohokar, APP for Respondent/State.

CORAM : M. W. CHANDWANI, J.

DATE : 6th MAY, 2024.

. Heard.

2. By this application, the applicant is seeking suspension of sentence in Special Case No.243 of 2016, passed by the learned Special Judge, Nagpur, thereby convicting the applicant alongwith other co-accused for the offences punishable under Sections 366-A and 506 of the Indian Penal Code, 1860 and under Section 6 of the Protection of Children form Sexual Offences Act, 2012.

3. It is contended by the learned counsel for the applicant that the name of the applicant does not appear in the First Information Report (FIR). The FIR came to be lodged against the main accused namely Anil Hansraj Neware. The applicant has no role in this case and he has been falsely implicated. There is no independent witness has been examined. There is no Call Detail Reports on record. He further submits that there are good chances to succeed in the appeal. It is also contended that the sentence of one Yogesh

Sanjay Narad, having same role, has been suspended by the Co-ordinate Bench of this Court. Therefore, on the ground of parity, the application of the present applicant be allowed.

4. Per contra, learned Additional Public Prosecutor for the respondent/State supports the impugned judgment and order passed by the learned Special Judge, Nagpur. He submits that there is sufficient evidence against the present applicant. Even, there is recovery of motorcycle at the instance of present applicant. According to him, the applicant has no good case on merit and therefore, he sought rejection of the application filed by the applicant.

5. Having gone through the impugned judgment and order dated 01.09.2023 as well as the FIR, it reveals that in FIR, the prosecutrix did not disclose the name of the present applicant. However, the supplementary statement of the victim is that the victim has stated about the role played by the present applicant. The Co-ordinate Bench of this Court in Criminal Application No.84 of 2024 in Criminal Appeal No.42 of 2024, suspended the sentence of co-accused namely Yogesh Sanjay Narad, mainly on the ground that there were no allegations against the said accused in FIR. So far as the submissions of the learned APP that there is recovery of motorcycle at the instance of present applicant is concerned, the panchas did not support the prosecution on this regard, even the Investigating Officer, who seized the motorcycle has not been examined, as he died.

6. Considering the fact that the sentence of co-accused Yogesh Sanjay Narad has been suspended by the Co-ordinate Bench of this Court, in my view, the case is made out for suspension of sentence of the applicant also. Accordingly, I proceed to pass the following order :

ORDER

- i) The criminal application is **allowed**.
 - ii) The execution of the sentence is hereby suspended, till final disposal of criminal appeal.
 - iii) The applicant be released on bail on his executing P. R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one surety in the like amount.
 - iv) The applicant shall attend the Trial Court on first day of every month and the Trial Court shall record his presence.
 - v) The applicant shall furnish his Cell-phone number and address alongwith address proof before the Trial Court.
7. The criminal application stands disposed of accordingly.

**CRIMINAL APPLICATION (APPA) NO.379 OF 2024 IN
CRIMINAL APPEAL NO.229 OF 2024.**

8. List the matter on 08.05.2024.

(JUDGE)