



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

CRIMINAL APPLICATION (APPA) NO. 133 OF 2024

IN

CRIMINAL APPEAL NO. 67 OF 2024

Nitin S/o. Premsing Rathod

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. F. N. Haidari, Advocate for applicant.
Shri A. M. Kadukar, APP for non-applicant/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 20.02.2024

Heard.

2. The applicant is seeking suspension of the substantive sentence passed on 19.12.2023 by the learned Judge, Special Court, Buldhana in Special Case No. 54/2020. By the impugned judgment and order, the Special Judge has convicted the applicant for the offence punishable under Section 354 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for four years and to pay a fine of ₹2,000/-. The applicant was also convicted for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act but, no separate sentenced was imposed.

3. Heard the learned counsel for the applicant as well as the learned APP for the State.

4. It is contended by the learned counsel for the applicant that the applicant is implicated in the offence due to misunderstanding. The complainant narrated this aspect in her cross-examination. The victim-girl has not been examined. Even in her statement before the Police, she has not named the applicant. The applicant has a good case on merit hence, seeks suspension of sentence.

5. The learned APP has objected the application on the ground that the the applicant has no merit on the appeal. The Trial Court has rightly recorded the conviction.

6. With the able assistance of the learned counsel for the applicant as well as the learned APP, I have gone through the impugned judgment and order as well as the deposition of the witnesses. The only allegation against the applicant is that he caught hold the hands of the victim-girl, while she was going to nature's call. The cross-examination of the informant shows that she lodged the report out of misunderstanding. The victim-girl has not been examined.

7. An arguable case is made out by the applicant. The applicant has been convicted for a fixed term of four years. The hearing of the appeal, on merit, will take time. In case the applicant succeed in appeal, the position will be irreversible. Hence, a case is made out for suspension of substantive sentence. Hence, this order:-

- i) The application is allowed.
- ii) Pending the appeal, the substantive sentence passed vide judgment and order dated 19.12.2023 by Judge, Special Court, Buldhana in Special Case No. 54/2020 shall remain suspended.
- iii) The applicant be released on bail, on he executing a PR bond of ₹25,000/- (Rs. Twenty Five Thousand) with one solvent surety in the like amount.
- iv) The applicant shall remain present at the time of final hearing of the appeal.

The Registry is directed to process the appeal as per rules.

(M. W. CHANDWANI, J.)