



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

CRIMINAL APPLICATION (APPA) NO. 591 OF 2024

IN

CRIMINAL APPEAL NO. 711 OF 2023

NURULLAKHA S/o HABIBKHA PATHAN

VERSUS

STATE OF MAH., THRU. P.S.O., P.S., SAMUDRAPUR, DIST. WARDHA.

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

Court's or Judge's Order

Mr. Amol M. Jaltare, Advocate for the applicant
Mrs. H. S. Hande, A.P.P. for the respondent/State.

CORAM : G. A. SANAP, J.

DATE : JULY 04, 2024.

1. This is an application for suspension of substantive sentence and grant of bail.
3. The appellant/applicant, by the judgment and order dated 07.09.2023 passed by learned Additional Sessions Judge, Hinganghat in Special (POCSO) Case No. 39/2017, has been convicted for the offences punishable under sections 354, 354-B and 506 of the Indian Penal Code and under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The applicant is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/- for the offence under Section 354 of IPC ; RI for three years and to pay fine of Rs.10,000/- for the offence under section 354-B of the IPC ; RI for one year and to pay fine of Rs.2,000/- for the offence Under Sec. 506 of IPC and RI

for five years and to pay fine of Rs.10,000/- for the offence punishable under Sec. 10 of the POCSO Act.

5. It is stated that the first application made by the appellant for suspension of substantive sentence has been withdrawn. It is stated that the appellant has been suffering from throat cancer. It is stated that the family members of the appellant desire to provide him the treatment in a private hospital. It is submitted that in the facts and circumstances, the sentence may be suspended.

6. In view of this, the report of the Superintendent of Central Prison, Nagpur has been called. Along with the report, the Superintendent of Central Prison has submitted the medical documents of the applicant along with the report of the Chief Medical Officer of Nagpur Central Prison. The Chief Medical Officer has stated in his report that the appellant is diagnosed as a Follicular Carcinoma right lobe of Thyroid by Experts of GMCH and SSH, Nagpur. He has been advised surgery, however, he has not given consent for the same. The report of the Chief Medical officer is taken on record and marked as "Article-A".

7. I have heard Mr. A. M. Jaltare, learned advocate for the applicant and learned Additional Public Prosecutor for the State. Perused the record and proceedings.

8. The sentences have been directed to run concurrently. The maximum sentence imposed is five years rigorous imprisonment. The entire fine amount has already been deposited. So far, the applicant has undergone the sentence

of about one year. In my view, considering the health problem of the appellant/applicant, he cannot be denied an opportunity to undergo the treatment by expert of his choice in a private hospital.

7. In view of the above, the application is allowed.

8. The substantive sentence imposed vide judgment and order dated 07.09.2023 passed by learned Additional Sessions Judge, Hinganghat, shall remain suspended during pendency of this appeal.

9. Appellant/applicant – Nurullakha S/o Habibkha Pathan be released on bail on his furnishing PR bond in the sum of Rs.15,000/- (Rupees Fifteen thousand only) with one surety of the like amount.

10. The application stands disposed of.

(G. A. SANAP, J.)

Diwale