



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

CRIMINAL APPLICATION (APPA) NO. 864 OF 2024

IN

CRIMINAL APPEAL NO. 66 OF 2024

Vikas @ Rohidas s/o Dilip Gonekar

Vs.

The State of Maharashtra, thr. P.S.O. P.S. Kalmeshwar, Dist. Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. T.A. Mirza, Advocate (appointed) to represent the Appellant.
Mr. P.P. Pendke, APP for the Respondent/State.

CORAM : G. A. SANAP, J.

DATED : 18th NOVEMBER, 2024.

. Heard learned advocate for the appellant/accused
and learned APP for the respondent/State. Perused the record
and proceedings.

2. This is an application for suspension of substantive
sentence. The appellant/accused is held guilty for the offences
punishable under Sections 452, 506 and 376(2) of the Indian
Penal Code, 1860 and under Section 3 r/w Section 4 of the
Protection of Children from Sexual Offences Act, 2012 and
sentenced to suffer rigorous imprisonment for 5 years for the
offence punishable under Section 452 of the IPC; rigorous
imprisonment for 2 years for the offence punishable under
Section 506 of the IPC and rigorous imprisonment for 10 years
for the offence punishable under Section 376(2) of the IPC. No
separate sentence has been awarded for the offence punishable
under Section 3 r/w Section 4 of the POCSO Act.

3. Learned advocate appointed to represent the appellant/accused submitted that proper inquiry was not conducted before framing the charge to try the appellant as an adult. It is submitted that there was no compliance of Section 19(1)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "J.J. Act") read with Rule 13 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short "Model Rules, 2016"). Learned advocate submitted that the appellant has a good case on merits.

4. Learned APP submitted that the Juvenile Justice Board in an inquiry conducted under Section 15 of the J.J. Act recorded a finding that the appellant was mentally and physically capable to commit the offence and possessed the ability to understand the consequences of his act. Learned APP submitted that, when the matter was referred to the Children's Court by the J.J.B., it was not necessary to conduct inquiry.

5. On going through the record and proceedings, I am satisfied that this matter is required to be heard on merits. The point raised by the learned advocate for the appellant deserves consideration. It is undisputed that, before framing the charge, separate order was not passed by the Children's Court under Section 19(1)(i) of the J.J. Act. In my view, considering the fact that this appeal would take its own time, it would be just and proper to grant the prayer

for suspension of substantive sentence. Hence, the following order:

6. Accordingly, the application is **allowed**.

i] The substantive sentence shall remain suspended during the pendency of the appeal.

ii] Appellant/accused – **Vikas @ Rohidas s/o. Dilip Gonekar** be released on bail on his furnishing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

iii] The bail before the trial Court.

7. The application stands disposed of accordingly.

(G. A. SANAP, J.)

Vijay