



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

CRIMINAL APPLICATION NO.113 OF 2025

IN

CRIMINAL APPEAL NO.66 OF 2025

(Yogesh Kamaldeo Nade Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Mr. P.A. Lohambare, Advocate for the appellant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 5, 2025.

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant was prosecuted of the offence punishable under Sections 363, 376(2)(n), 323, 504 and 506 of the Indian Penal Code and Sections 4 and 10 of the Protection of Children from Sexual Offences Act, 2012.

3. As per the prosecution case, the victim who has lodged the report was below 18 years of age at the time of incident. She was acquainted with the present applicant who is the Rickshaw Driver. It is alleged that whenever the victim was attending the tuition classes, the applicant used to follow her and sexually harassed her. It is further alleged that the applicant has kidnapped her on 24/06/2019, took her at his uncle's house and subjected her for the forceful sexual assault which resulted into her pregnancy. She delivered a child and the applicant and the victim are analyzed as the biological parents of the child

delivered by the victim. On the basis of the said report, police have registered the crime and after investigation, the charge-sheet is submitted against the present appellant.

4. After appreciation of the evidence, the Sessions Court held the present appellant guilty of the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- in default to suffer rigorous imprisonment for one month. The appellant is further convicted of the offence punishable under Section 376(2)(n) and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5000/- in default further suffer rigorous imprisonment for four years.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant.

6. Learned Counsel for the appellant submitted that the victim has performed the marriage with the present appellant and at the relevant time she was more than 18 years of age. It was a consensual act. He has also invited my attention towards one NC report which is filed by the victim wherein she has stated that she and the present applicant are husband and wife. He submitted that the trial Court has not considered the fact that out of love affair there was a physical relationship and they performed the marriage with each other. The appellant has every chance of success in the present appeal. However, the appeal would take its own time for its final

disposal. In the meantime, if sentence is executed, the entire appeal would become infructuous.

7. Learned APP strongly opposed the said application on the ground that during evidence it revealed that the victim was below 18 years of age. She was taken from the custody of her lawful guardian and thereafter she was subjected for the forceful sexual assault which resulted into her pregnancy. She has delivered a child. The DNA report is on record which shows that the present appellant and the victim are the biological parents of the child delivered by the victim. Thus, there is an ample evidence on record sufficiently shows the involvement of the present appellant in the alleged incident. Thus, the appeal itself is devoid of merits, and therefore, the application deserves to be rejected.

8. I have heard learned Counsel for both the sides. Perused the impugned judgment from which it reveals that learned Special Judge has considered the evidence of the prosecution which is adduced to prove that she was below 18 years of age. The evidence of the victim also shows that she was taken by the present applicant from the lawful guardian of her parents and thereafter subjected for the sexual assault. As far as the NC report is concerned admittedly in the said NC report she has stated that she is the wife of the present appellant but considering that the victim was minor at the relevant time. Whether her consent was relevant or not is already answered by the Special Court. As far as the suspension of

sentence is concerned at this stage, reappreciation of the evidence is not permissible. The Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary in Criminal Appeal No.1331-1332/2023 decided on 02/05/2023*** dealt with this aspect by referring its earlier decision and held as under:

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the

CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

9. In the light of the above principles laid down by the Hon'ble Apex Court, if the evidence in the present case is considered and the impugned judgment, at this stage, nothing is on record to show that the Special Court has not considered the vital aspects while passing of the judgment. Thus, at this stage, no case is made out for suspending the sentence, and therefore, the application deserves to be rejected.

10. Accordingly, the application is rejected.

CRIMINAL APPEAL NO.66 OF 2025

Heard.

2. **ADMIT.**

3. Call for R. & P

4. After receipt of R. & P registry to expedite the preparation of the paper book.

5. Place the matter for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)