



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

Criminal Appeal (APEAL) No. 793 of 2023

Sagar S/o Maroti Naitam

Versus

The State of Maharashtra through Police Station Officer, Police Station
Patan, Tq. Jivti, District Chandrapur

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

Court's or Judge's Order

Shri Mahesh Rai, Advocate for the applicant.

Ms. Ritu Sharma, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13th JANUARY, 2025.

Office note shows that letter issued to the Police Station Officer, Police Station Patan, Tq. Jivti, District Chandrapur regarding intimation given to the victim is awaited.

2. Infact in view of the order passed by the Coordinate Bench of this Court in Criminal Appeal Stamp No. 8953 of 2023 wherein the directions are already given to the Registry that the Registry of this Court shall accordingly processes the application under Sections 439 and 389 of the Code of Criminal

Procedure. As also criminal appeals filed under Section 374 of the Code of Criminal Procedure against the conviction under the provisions of the POCSO Act, as also above quoted provisions of the Indian Penal Code. The copy of the order was also directed to be served upon the Director General of the Police, State of Maharashtra who shall by way of circular / notification issued necessary directions to all concerned.

3. In view of that the name of the victim is already deleted therefore it is not necessary to secure the presence before this Court.

Criminal Application (APPA) No. 83 of 2024 in Criminal Appeal No. 793 of 2023.

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

2. The appellant – accused was prosecuted for the offence punishable under Sections 363, 366-A, 376(2)(n), 376(3) of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act.

3. After appreciation of the evidence, the learned trial Court has convicted the accused and sentenced him to suffer rigorous imprisonment for 20

years and to pay fine of Rs.5000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act read with Section 376(2)(n) and 376(3) of Indian Penal Code. Being aggrieved and dissatisfied with the same, the present appeal was preferred along with application for suspension of sentence.

4. The facts of the prosecution case are as under: On 20th May, 2021, the informant lodged an oral report contending that her younger daughter i.e. victim, aged about 13 years was studying in 8th standard in Government Ashram School, Patan. On 3rd May, 2021 in between 1.00 p.m. to 2.00 p.m as usual, she along with other girls went in the locality for playing. Till evening her daughter i.e. victim did not return the house and therefore, the parents and other family members took search of victim also, but victim was not found. Therefore, she lodged the report about missing of her daughter. During investigation her daughter was found alongwith the accused. The statement of the victim was recorded and it revealed that she was subjected for the sexual assault by the present appellant on the promise of marriage. After completion of the investigation, the charge-sheet was submitted. After appreciation of the

evidence, the learned Judge has convicted the appellant as aforestated.

5. Being aggrieved by the order and judgment of the conviction, present appeal is preferred by the appellant.

6. Heard learned counsel for the appellant Shri Mahesh Rai, who invited my attention to the deposition of the victim and submitted that two different birth dates came before the learned trial Court. One stated by the victim as 6th December, 2006 whereas as per Aadhar Card birth date mentioned as 30th August, 2008. Thus, the prosecution has not adduced any evidence as to the actual birth date of the victim. He further submitted that evidence of the victim shows that there was a love affair between her and the present appellant who is also aged about 21 years at the time of the incident and two youngsters came together out of the love affair. Her evidence further shows that she went along with the present appellant at her own. He submitted that though consent of the victim is not relevant but considering the fact that there was a love affair and out of that love affair two teenagers has developed physical relationship was not considered by the Special Court while imposing the sentence. Thus, he has many chances of success in the present appeal. However, appeal would take its time in

the final disposal. In the meantime, if the sentence is executed the appeal would become infructuous. In view of that the sentence imposed by the learned trial Court be suspended, the appellant be released on bail.

7. Learned Additional Public Prosecutor strongly opposed the said application and submitted that considering the victim was minor at the relevant time, her consent is not relevant. The learned trial Court has considered the same and rightly convicted the present appellant. In view of that, the application deserves to be rejected.

8. Having heard the learned counsel for the appellant and learned Additional Public Prosecutor for the State. Perused the evidence on record. There is no dispute as to the fact that the victim was minor at the relevant time as per the evidence adduced by her. But considering two dates came before the trial Court as to the birth date of the victim and the evidence on record nowhere placed on record that the prosecution has adduced any evidence as far as her exact birth date is concerned which is pointed out by the learned counsel for the appellant. Moreover the evidence of the victim shows that there was a love affair between her and the present appellant and out of love affair she went along with him and physical relationship was developed

between them. Thus, the learned counsel for the appellant at this stage has pointed out that he has many arguable points in the present appeal.

9. As far as the principles as to the suspension of sentence are concerned, are laid down by the Hon'ble Apex Court in the case of Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023 wherein in paragraph no. 33, has held that "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.

10. In the case in hand, the appellant has made out the grounds to show that he has every chance of success in the present appeal. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence passed by the Extra Joint District Judge & Additional Sessions Judge, Chandrapur in Special (POCSO) Case No.83/2021 is suspended till the disposal of the appeal.
- (iii) The appellant shall be released on bail on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall attend the Extra Joint District Judge & Additional Sessions Judge, (Special Court POCSO) Chandrapur till disposal of the appeal

on 1st of every month and the Special Court shall record his presence.

11. Criminal application No. 83 of 2024 is disposed of.

Criminal Appeal No. 793 of 2023

Appeal is already admitted.

2. Record and proceeding is already received.
3. Appeal be listed for the final disposal as per its own turn.

[URMILA JOSHI-PHALKE, J.]