



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

CRIMINAL APPLICATION NO.96 OF 2025

IN

CRIMINAL APPEAL NO.58 OF 2025

(Shubham Ramdasji Kapte 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

Mr. M.V. Rai, Advocate for the appellant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 28, 2025.

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

2. Learned Counsel for the appellant submitted that the appellant was prosecuted of the offence punishable under Sections 363, 366, 376(2)(n), 506 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The crime is registered on the basis of the report lodged by the mother of the victim girl on an allegation that victim has left the house and not returned back. During search of the victim she was found along with the accused/appellant. Her statement was recorded and after completion of the investigation, the charge-sheet was submitted.

4. Learned trial Court has appreciated the evidence and held that the victim was minor at the relevant time. She was kidnapped from the lawful guardianship of her mother and subjected for the sexual assault and thereby held guilty and convicted of the offence punishable under Section 363 of IPC and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- in default Simple imprisonment for eight days. He is further convicted of the offence punishable under Section 366 of IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- in default to suffer Simple implement for 15 days. The appellant is also convicted of the offence punishable under Section 376(2)(n) of IPC and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.3000/- in default of payment of fine, simple imprisonment for two months. He is also convicted of the offence punishable under Section 506 of IPC.

5. Learned Counsel for the appellant from the impugned judgment submitted that the trial Court has not considered that out of love affair victim joined the company of the appellant and physical relationship was developed between them out of love affair. He further submitted from the impugned judgment that he has many arguable points in the present appeal. The appeal would take its own time for its final disposal. In the meantime, if

sentence is executed the purpose of preferring the appeal would frustrate. In view of that, he be released on bail and the execution of sentenced be suspended.

6. *Per contra*, Learned APP strongly opposed the application on the ground that the appeal itself is devoid of merits, the victim was minor at the relevant time. Her consent is not relevant, and therefore, the application deserves to be rejected.

7. I have heard learned Counsel for both the parties and perused the impugned judgment and the evidence of the victim from which it reveals that out of love affair victim left the house and joined the company of the appellant. Thereafter there was a physical relationship between them. Thus, the appellant has succeeded in establishing that he has many arguable points in the present appeal. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 17/12/2024 passed by the Special Judge (POCSO Act), Wardha in Special Case No.47/2018 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Shubham Ramdasji Kapte be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five thousand) with one surety, in the like amount.

(iv) The appellant shall attend the proceedings before the Special Court, Wardha till disposal of the appeal and the Special Court shall record his presence.

8. The application stands disposed of.

CRIMINAL APPEAL NO.58 OF 2025

Heard.

2. The appeal is already admitted and R. & P. is already received.

3. Place the appeal before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)