



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

CRIMINAL APPLICATION (APPA) NO.161 OF 2024
IN
CRIMINAL APPEAL NO.83 OF 2024

Sunil Nawalu Sahade

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Ghuggus, District Chandrapur

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

Court's or Judge's orders

Mr. M. V. Rai, Counsel for the applicant.

Mr. V. A. Thakare, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/01/2025

1. By this application, the appellant is seeking suspension of sentence and releasing him on bail. The appellant is prosecuted for the offence punishable under Section 363, 366, 376(2)(j) of the Indian Penal Code (for short 'the IPC) and under Section 4 of the Protection of Children from Sexual Offences Act (for short ' the POCSO').

2. The crime was registered on the basis of report lodged by the mother of the victim girl on an allegation that on 15.03.2021 at about 7.30 a.m. the victim had left the house to attend the college and not returned back. During search of the victim, the victim was found along with the accused and her

statement was recorded. On the basis of the same the crime was registered.

3. After appreciation of the evidence, the learned Special Court held the present appellant guilty of the offence punishable under Section 4 of the POCSO Act and sentenced him to undergo rigorous imprisonment for ten years and fine of Rs.2000/-, in default rigorous imprisonment for six months. He was acquitted from the charges under Sections 363 and 366 of the IPC.

4. Learned Counsel for the appellant submitted that as far as the victim is concerned, she has admitted during the cross-examination that there was a love affair between her and the present appellant. She left the house at her own and joined the company of the appellant due to the love affair. He submitted that thus, he has many arguable points in the present appeal. Moreover, the admission given by the mother of the victim also shows that the birth date which was narrated by her is approximately. He submitted that the prosecution has not adduced the evidence to show that the birth date of the victim is 21.10.2004. Though the prosecution has examined the Headmistress of the school, not of the school wherein she was firstly admitted. Thus, he has many arguable points in the present appeal, in view of that the sentence be suspended and the appellant shall be released on bail.

5. Learned APP strongly opposed the said application on the ground that a minor victim girl was subjected for forceful sexual assault and her consent is not relevant. In view of that, no ground is made out for suspension of sentence.

6. After hearing both the sides and on perusal of the evidence on record. Admittedly, the victim has admitted about the love affair and she has also admitted that out of a love affair, she joined the company of the present appellant. It further reveals that the birth date of the victim is in question as appropriate evidence is not adduced by the prosecution. Thus, the learned Counsel for the appellant has pointed out many arguable points 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 impugned sentence passed in Special (POCSO) Case No.58/2021 is hereby suspended till disposal of the appeal.

(iii) The appellant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

The criminal application is disposed of.

CRIMINAL APPEAL NO.83 OF 2024

1. Appeal is already admitted.
2. Record and proceeding is already received.
3. Appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)