



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

CRIMINAL APPLICATION (APPA) NO. 258 OF 2025 IN
CRIMINAL APPEAL NO. 139 OF 2025

Sudhakar s/o Pundlaikrao Kalmegh 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, counsel for applicant/appellant.

Mr. N.B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/03/2025.

1. By this application, the appellant is seeking suspension of sentence and releasing the appellant on bail.
2. The appellant was prosecuted for the offence punishable under Sections 376(1) and 506(2) of the Indian Penal Code, 1860, and sentenced to suffer rigorous imprisonment of ten years and fine of Rs. 7,000/-. In default of payment, further rigorous imprisonment for one year. He was further convicted for the offence punishable under Section 506(2) of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for three years and fine of Rs. 3,000/-. In default, rigorous imprisonment for six months.
3. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant along with the application for suspension of sentence.

4. Heard learned counsel for the appellant, who invited my attention towards evidence of PW. No.1/victim, and submitted that, on going through the evidence of the victim, it reveals that the delay in lodging the report is not explained by her. From her evidence, it reveals that her evidence is not inspiring the confidence. Thus, as per the evidence of the victim and at the time of the alleged incident, other woman i.e. PW. No.6 was along with her, who has not supported her. Thus, considering all these aspects, which are not considered by the learned Sessions Judge. The appellant has every chance of success in the present appeal, but the appeal would take its own time for its final disposal. In the meantime, if the sentence is executed, the appeal would become infructuous.

5. Learned APP strongly opposed the said application on the ground that the appeal itself is devoid of merits and liable to be dismissed. He also invited my attention towards evidence of the victim and submitted that the evidence of the victim is consistent. As far as the alleged incident is concerned, there is no reason which came forward to implicate the present appellant in the alleged offence. Thus, considering the material, which is sufficient to convict the present appellant, and therefore, the learned trial Court has rightly convicted the appellant; at this stage, re-appreciation of the evidence is not permissible. In view of that, the application deserves to be rejected.

6. After hearing both sides and on perusal of the entire evidence on record. Learned counsel for the appellant has pointed out that he has many arguable points in the present appeal. He has also invited my attention towards evidence of the victim and the cross-examination as well as evidence of the other witnesses. As far as the delay of 40 days is concerned, there is no explanation to that extent. He submitted that, considering all these aspects, the appellant has every chance of success in the present appeal, but the appeal would take its own time for its final disposal.

7. Learned APP strongly opposed the present application, and submitted that the evidence is sufficient to reject the application. Admittedly, at this stage, re-appreciation of the evidence is not permissible, and what is to be seen is whether the case presented by the prosecution and accepted by the trial Court can be set to be a case in which ultimately the convict stands for fair chance of acquittal.

8. This aspect is also considered by the Hon'ble Apex Court in the case of ***Omprakash Sahni vs Jai Shankar Chaudhary and another in Criminal Appeal Nos. 1331-1332 of 2023 decided on 02/05/2023***, wherein the Hon'ble Apex Court by referring the provision decisions observed as follows;

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 re-appreciate the evidence at the stage of Section 389 of the Cr.P.C. 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 observation, the present appellant has made out a case for suspension of sentence. In view of that, I proceed to pass the following order.

- a] The criminal application is **allowed**.
- b] The execution of the sentence imposed in Sessions Case No. 22/2023 is hereby suspended till disposal of the appeal.
- c] The appellant shall be released on bail on executing P.R. Bond of Rs. 25,000/- with one surety of like amount.

d] The appellant shall attend the Court of Additional Sessions Judge, Wardha, once in a month i.e. on 5th of every month, and the Sessions Judge, Wardha, shall record his presence till disposal of the appeal.

10. The criminal application (APPA) No. 258/2025 is **disposed of.**

CRIMINAL APPEAL NO. 139 /2025

1. Heard.
2. **Admit.**
3. Learned APP waives service of notice on behalf of respondent/State.
4. Call for record and proceedings.
5. The criminal appeal be listed before this Court after preparation of the paper-book.

[URMILA JOSHI-PHALKE, J.]