



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

CRIMINAL APPLICATION (APPA) NO. 443 OF 2024 IN
CRIMINAL APPEAL No. 247 OF 2024

Sewak Baurao Kumbhale 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. Samir S. Das, counsel (appointed) for applicant/appellant.
Ms. Ritu Sharma, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/02/2025.

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

2. The applicant is charged of the offence punishable under Section 376AB of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. On an allegation that a victim girl aged about 7 years, who is mentally unsound mind was subjected for the forceful sexual assault by present applicant. On the basis of the said report, police have registered the crime. After completion of the investigation the charge-sheet was submitted and learned trial Court held the applicant guilty of the offence punishable under Section 376(AB) of Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment of 20 years, and fine of Rs. 2,000/- in default, rigorous imprisonment for one month.

3. Being aggrieved and dissatisfied with the said judgment and order of sentence, the present appeal is preferred by the applicant.

4. Heard learned counsel for the applicant, who submitted that the learned trial Court has not appreciated the evidence in proper perspective and wrongly convicted the applicant. The applicant has every chance of success in the present appeal, however the appeal would take its own time for its final decision. In the meanwhile if the sentence is executed, then appeal would become infructuous, and prays for suspension of sentence.

5. Learned APP strongly opposed the said application on the ground that the evidence on record, specifically states that a seven years mentally challenge girl was subjected for the forceful sexual assault, as far as the evidence is concerned, which is consistent and therefore, appeal itself is devoid of merits and liable to be dismissed. In view of that, application deserves to be rejected.

6. Heard learned counsel for the applicant and learned APP for the State, perused the impugned judgment as well as depositions, which sufficiently shows the involvement of the present applicant, at this stage, re-appreciation of the evidence is not permissible. What is to be seen, whether the applicant has a case to show that he has fair chances of acquittal.

7. This aspect is dealt 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 held as follows:-

“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 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.”

8. In the case in hand, the seven years girl was subjected for forceful sexual assault, who is also suffering from the mental disorder. On perusal of the evidence and the impugned judgment, it reveals that, at this stage, no case is made out for suspension of sentence, as the applicant, could not point out that he has fair chances of acquittal in the present case. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

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1. The appeal is already admitted. The record and proceedings is already received.
2. The office to expedite the preparation of the paper-book. The appeal be listed for the final disposal after preparation of paper-book.

[**URMILA JOSHI-PHALKE, J.**]