



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

CRIMINAL APPLICATION NO.413 OF 2024

IN

CRIMINAL APPEAL NO.223 OF 2024

(Shaikh Yusuf Shaikh Ayyub 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. L. Vairagade, Advocate for the appellant.
Ms S. Kolhe, APP for the State.
Mr. R. Khobragade, Advocate (appointed) for respondent No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 18, 2024.

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 376(2)(i), 376(2)(n), 417 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. As per the prosecution case, the victim who is 16 years old girl was subjected for the sexual assault by the accused on the promise of marriage which resulted into her pregnancy and DNA report discloses that the applicant and the victim are concluded to be the biological parents of the child delivered by the victim. After completion of the investigation, the charge-sheet was filed. The trial was conducted and the Special Court come

to the conclusion that the appellant is the guilty of the offence punishable under Sections 376(2)(i) of the IPC and sentenced to suffer rigorous imprisonment of ten years and to pay fine of Rs.25,000/- in default of payment of fine simple imprisonment of three months.

4. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that he has already undergone 6 years of the punishment. Victim has admitted during her cross-examination that there was a love affair. Thus, the physical relationship was developed between them out of love affair. Thus, considering the nature of the evidence and the admission given by the victim, 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 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.

5. Learned APP and learned Counsel for respondent No.2 strongly opposed the application on the ground that the appeal itself is devoid of merits and therefore, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties and perused the evidence of the victim as well as the impugned judgment from which it reveals that the

victim has admitted during her cross-examination that there was a love affair between her and the present applicant. Thus, it appears that two young persons came together and the physical relationship was developed between them out of love affair. Admittedly, the appellant is behind bar from last six years. The total period of punishment is 10 years. Thus, he has already undergone more than 50% of the punishment. 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, 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 11/05/2023 passed by the Special Judge, Malkapur in Special Case (Child Protection) No.22/2018 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Shaikh Yusuf Shaikh Ayyub 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.

7. The application stands disposed of.

CRIMINAL APPEAL NO.223 OF 2024

Heard.

2. 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.)

**Divya*