



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

CRIMINAL APPLICATION (APPA) NO. 549 OF 2023 IN
CRIMINAL APPEAL NO. 328 OF 2023

Gopal S/O. Arun Bodade Vs State Of Maharashtra And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr A.J.Thakkar, counsel for applicant/appellant.

Mrs. S.S. Dhote, APP for non-applicant/State.

Ms. Mohini A.Sharma, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/02/2025.

1. By this application, the applicant/appellant is seeking suspension of sentence and releasing the applicant on bail.
2. The applicant is prosecuted for the offence punishable under Sections 363, 376(2), and 506 of the Indian Penal Code, 1860, and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.
3. The accused/applicant was prosecuted on an allegation that she is a five years old girl and was subjected for the sexual assault by the present applicant/appellant. She has not narrated the incident immediately, but on the next day, when she was unable to pass the stool, at that time, her mother inquired with her, and thereafter, she disclosed the said incident. Thereafter, the report was lodged. After investigation, the charge-sheet was filed against the present applicant.

4. Learned counsel for the present applicant submitted that there was a previous enmity between the family of the victim and the present applicant. On that count, he is falsely implicated in the alleged offence. From the impugned judgment and the evidence, he pointed out that the material witness, who was playing along with the victim at the relevant time, when she was taken, is not examined by the prosecution. The prosecution has also not adduced the evidence by examining the medical witnesses. The evidence of the victim also shows she suffers from various infirmities, as she has admitted regarding the previous enmity between her family members and the present applicant. As there is no corroboration to the evidence of the victim, which is required in light of previous enmity between the parties. The applicant has every chance of success in the present appeal, and therefore, execution of the sentence be suspended, and the applicant is released on bail.

5. Learned APP strongly opposed the said application and submitted that not only the evidence of the victim but also the evidence of mother of the victim specifically states the involvement of the present applicant; at this stage, re-appreciation of the evidence is not permissible, and therefore, the application deserves to be rejected.

6. After hearing both sides and on perusal of the record, it reveals that the trial Court has held the present

applicant guilty of the offence punishable under Section 376(2) of Indian Penal Code, 1860 as well as under Section 3 punishable under Section 4 of the Protection of Children from the Sexual offences Act, 2012, and sentenced to suffer rigorous imprisonment for ten years and fine of Rs. 5000/- in default to suffer simple imprisonment for one month. The accused was further convicted for the offence punishable under Section 363 of the IPC and 506 and sentenced to suffer rigorous imprisonment for five years and fine of Rs. 5000/- and for the offence punishable under Section 506, rigorous imprisonment for two years and fine of Rs. 2000/-, in default simple imprisonment for 15 days.

7. From the impugned judgment as well as from the evidence of the victim and the other witness shows that he has many arguable points in the present appeal, and the appeal would take its own time for its final disposal.

8. The learned counsel for the appellant has pointed out that the material witnesses have not been examined. There is no dispute regarding the legal aspect, which states that re-appreciation of the evidence at this stage is not permissible. The focus should be on whether the applicant has any chance of success in the present appeal while considering the application for suspension of the sentence.

9. 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***, dealt with this aspect and observed 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.PC. 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.”

10. In view of the above observations and in view of the submissions made by learned counsel for the applicant, he has made out a case for suspension of the

sentence. In view of that, I proceed to pass the following order.

- a] The criminal application is allowed.
- b] The execution of the sentence passed in Sessions Case No. 89/2017 passed by the Additional Sessions, Akola, is hereby suspended till disposal of the appeal.
- c] The appellant shall be released on bail on executing PR. Bond of Rs. 25,000/- with one solvent surety of the like amount.

11. The criminal application (APPA) No. 549/2023 is **disposed of**.

CRIMINAL APPEAL NO. 328 /2023

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

[URMILA JOSHI-PHALKE, J.]