



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

CRIMINAL APPLICATION NO.494 OF 2024

IN

CRIMINAL APPEAL NO.276 OF 2024

(Ashish Diwakar Lohakare 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. A.C. Jaltare, Advocate a/w Mr. R.S. Bhalerao, Advocate for the
appellant.

Mr. C.A. Lokhande, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 11, 2025.

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

2. The appellant is convicted of the offence
punishable under Section 376(2)(n) of the IPC and
sentenced to suffer rigorous imprisonment for 10 years
and to pay fine of Rs.25,000/- in default to suffer rigorous
imprisonment for one year.

3. The accused was charged on an allegation
that the victim who is adult lady and suffering from some
health issues got acquaintance with the present appellant.
The present appellant was visiting her house. He
expressed his desire and also promised her for marriage
and on the promise of marriage, he subjected her for the
sexual assault which resulted into her pregnancy. On the
basis of the said report, police have registered the crime

against the present appellant. During investigation, the DNA report was obtained and it revealed that the present appellant and the victim are the biological parents of the fetus.

4. Learned Counsel for the appellant submitted that from the evidence of the victim itself it revealed that it was a consensual act. As far as the nature of the evidence is concerned, the Special Court has not considered the aspect of consensual relationship and convicted the appellant. He further pointed out from the impugned judgement that he has many arguable points in the present appeal but the appeal would take its own time for its final disposal. Moreover, the punishment imposed is of a limited period, if sentence is executed then the appeal will become infructuous. In view of that, he prays for suspension of sentence and releasing the appellant on bail.

5. Learned Additional Public Prosecutor 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 impugned judgement as well as the depositions on record from which it reveals that the victim is aged about 23 years at the time of incident. From the allegation, it reveals that the appellant has promised her for marriage and thereafter physical relationship was

developed between them. Thus, from the statement and the evidence of the victim at this stage, it is apparent that out of promise of marriage, victim consented for having the physical relationship and the alleged incident has took place.

7. Learned Counsel for the appellant has pointed out that he has many arguable points in the present appeal and there is every chance of success. However, the appeal would take its own time for its final decision, moreover the punishment imposed is for a limited period. 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 01/03/2024 passed by the Additional Sessions Judge, Nagpur, in Sessions Case No.421/2015 is hereby suspended till final disposal of the appeal.

(iii) The appellant - Ashish Diwakar Lohakare 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.

8. The application stands disposed of.

CRIMINAL APPEAL NO.276 OF 2024

Heard.

2. The 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*