



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

CRIMINAL APPLICATION (APPA) NO.613 OF 2024
IN
CRIMINAL APPEAL NO.342 OF 2024

Rahul s/o Dilip Latore

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Chamorshi, District Gadchiroli

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Poonam Pisurde, Counsel h/f Ms. P. B. Jinde, Counsel for the
applicant.

Mr. V. A. Thakare, APP for the non-applicant / State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/02/2025

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

2. The applicant is prosecuted for the offence
punishable under Section 376(2)(n) of the Indian
Penal Code and under Sections 4 and 6 of the
Protection of Children from Sexual Offences Act,
2012. The allegation against the present applicant is
that the victim who is aged about 16 years got
acquaintance with the present applicant when she
was studying and was staying with her grandfather
and the accused was her neighbour. As far as the
allegation, the accused used to follow her and
express his feelings to her. Initially, she has shown

reluctance but subsequently, a love relationship was developed between them and they were talking with each other. It is alleged that despite of her reluctance and without her consent, she was subjected for forceful sexual assault by the present applicant and thereafter, the accused broke up the relationship and avoided to meet her. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the allegations are concerned, which appears that there was a love relationship between the victim and the present applicant which resulted into their physical relationship out of a love affair. However, this fact is not considered by the learned Special Court while awarding the punishment. She submitted that the fact that two teenagers came together and out of a love affair, there was a physical relationship developed between them. It is not the offence which is committed by the present applicant out of the lust. The applicant has many arguable points in the present appeal. She has pointed out from the impugned judgment as well as from the evidence on record that there are many arguable points in the present appeal. It is pertinent to note that the learned Special Court has not considered that the entire incident took place between the applicant and the victim out of a love affair. The appeal would take

its own time for its final disposal. In the meantime, if the sentence is executed then the applicant would suffer and the appeal become infructuous.

4. Learned APP strongly opposed the said application on the ground that considering the victim was below 18 years of age, her consent was not relevant, and therefore, even though there is a love relationship, there was no consent for the physical relationship and the applicant has subjected her for the forceful sexual assault, therefore, the application deserves to be rejected as there is no merit in the appeal itself.

5. After hearing both sides and on perusal of the impugned Judgment as well as the evidence, it reveals that out of the acquaintance, the love relationship was developed between the applicant and the victim and out of a love relationship, there was a physical relationship between them. The impugned Judgment also shows that the physical relationship was out of a love relationship. Considering the various points submitted by the learned Counsel for the applicant, it reveals that she has many arguable points in the present appeal. This aspect of suspension of sentence is considered by the Hon'ble Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023**

decided on 2nd May of 2023 by observing 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 reappreciate the evidence at the stage of Section 389 of the CrPC 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."

6. In the case in hand, the learned Counsel for the applicant has rightly pointed out that the alleged incident has occurred due to the love relationship between them and this aspect has not considered while awarding the punishment. Thus, the applicant has made out a case for suspension of

sentence and releasing the applicant on bail. In view of that I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence imposed in Special (POCSO) Case No.80/2019 is suspended till disposal of the appeal.
- (iii) The applicant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.
- (iv) The applicant shall attend the Special Court, Gadchiroli till the disposal of the appeal on 1st of every month and the Special Court shall record his presence.

The application is disposed of.

CRIMINAL APPEAL NO.342 OF 2024

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

(URMILA JOSHI-PHALKE, J.)