



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

CRIMINAL APPLICATION (APPA) NO.942 OF 2023
IN
CRIMINAL APPEAL NO.580 OF 2023

Vijay @ Gabru Kailas Karosiya

Vs.

State of Maharashtra, through Police Station Officer, Raipur, District
Buldhana and another

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

Court's or Judge's orders

Mr. M. V. Rai, Counsel for the appellant/applicant.

Ms. Swati Kolhe, APP for respondent No.1/State.

Ms. Falguni Badani, appointed Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/01/2025

1. By this application, the applicant is seeking suspension of sentence and releasing him on bail.
2. The applicant is the original accused, who prosecuted of the offence punishable under Sections 363, 366A, 376(2)(j) and 376(2)(n) of the Indian Penal Code and under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012.
3. The allegation against the present applicant is that the victim who is aged about 17 years, when she was on boar-well situated at village Satgaon Bhusari, Taluka Chikhli, District Buldhana,

on 24.03.2019 she went along with the accused without informing her parents. Though her parents searched her, but she could not found therefore, the report was lodged. After three months of the incident, the informant learnt that victim is residing along with the accused. He informed the police. Thereafter, police visited the house of the accused and they found that the victim and the accused were staying as husband and wife. Thereafter, the statement of the victim was recorded from which it reveals that there was a physical relationship between the present applicant and the victim. On the basis of the same, the crime was registered.

4. After registration of the crime, the wheels of the investigation start rotating. After completion of the investigation, the charge-sheet was filed. The Special Court recorded the evidence and after appreciating the evidence, convicted the present applicant for the offences punishable under Sections 363, 366-A and 376(2)(j), 376(2)(n) of the Indian Penal Code. The accused is convicted for the offence punishable under Section 363 and sentenced to suffer rigorous imprisonment for a period of seven years and fine of Rs.1000/- and in default suffer rigorous imprisonment for one month. He is convicted for the offence punishable under Section 366-A and sentenced to suffer rigorous imprisonment for a period of ten years and he shall pay fine of Rs.1000/- and in default to suffer rigorous

imprisonment for one month. He is further convicted for the offence punishable under Section 376(2)(j) and sentenced to suffer rigorous imprisonment for ten years and to pay fine amount of Rs.2000/- in default rigorous imprisonment for two months and he is further convicted for the offence punishable under Section 376(2)(n) and sentenced to suffer rigorous imprisonment for ten years and fine of Rs.2000 in default rigorous imprisonment for one month. The accused further convicted for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for a period of three years and also pay fine of Rs.500/- in default to suffer rigorous imprisonment for 15 days.

5. Heard learned counsel for the applicant who invited my attention towards the evidence of the victim and submitted that the evidence of the victim shows that at her own she willingly joined the company of the applicant out of the love affair and stayed along with him. She has not made complaint or shown her displeasure when she was residing along with the present applicant. Thus, considering the evidence of the victim, the present applicant has every chance of success in the present appeal, but the appeal would take its own time for its final disposal. Moreover, the applicant has already undergone five years of imprisonment. In view of

that, the execution of the sentence be suspended and the applicant be released on bail.

6. Learned APP strongly opposed the said application on the ground that considering the victim was only 17 years of age at the time of incident, her consent is not relevant. In view of that, even her evidence shows that she willingly stayed along with the present applicant, but he is a major person who knows the consequence of this act and therefore, submission of the learned Counsel for the applicant that out of a love affair, they resided together is not acceptable. Hence, the application deserves to be rejected.

7. After hearing both the sides and on perusal of the impugned judgment as well as the evidence of the victim, it reveals that the victim was on the verge of attaining the majority. Learned counsel for the applicant pointed out from her evidence that he has many arguable points in the present appeal and every chance of success in the present appeal. However, the appeal would its own time for its final disposal. Moreover, the applicant has already undergone five years of the sentence. Thus, considering all above these facts, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.

(ii) The execution and the implementation of the sentence imposed in Special Case (POCSO) No.48/2019 is hereby 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 in the like amount.

(iv) The applicant shall attend the Court of Additional Sessions Judge (Special Court) for the Protection of Children from Sexual Offences Act, Buldhana, on 5th of every month and the Special Court shall record his presence.

The application is disposed of.

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

(URMILA JOSHI-PHALKE, J.)