



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

CRIMINAL APPLICATION (APPA) NO.678 OF 2024
IN
CRIMINAL APPEAL NO.385 OF 2024

Lankesh s/o Baburao Bhoyar

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Bramhapuri, District Chandrapur

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

Court's or Judge's orders

Mr. R. M. Daga, Counsel for the applicant.
Ms. Ritu Sharma, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/03/2025

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

2. The applicant who is he accused was prosecuted for the offence punishable under Sections 376 (1)(A), 376(2)(n), 376(3) and 506 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act.

3. The crime is registered on the basis of report lodged by the victim on an allegation that she used to receive the messages of the present applicant on the mobile phone of her father thereafter, she exchanged some messages to the present applicant, but the present applicant took her

by calling her at the Rice Mill and then subjected for forceful sexual assault. On the basis of said report police have registered the crime.

4. After completion of the formality of the investigation, the charge-sheet was filed. In order to establish the charge, the prosecution has examined in all nine witnesses. The entire reliance of the prosecution is on the evidence of the victim and the medical evidence as well as the evidence of the mother. The victim though supported the prosecution case, but during cross-examination, she has admitted some facts which shows that she herself left the house and joined the company of the applicant. Learned Counsel for the applicant submitted that at this stage, reappraisal of the evidence admittedly is not permissible, but what the applicant to show that he has fair chance of acquittal and from the cross-examination of the PW-1 the applicant has shown that he has every chance of success in the present appeal, but the appeal would take its own time for its final disposal. In the meanwhile, if sentence is executed then the appeal would become infructuous.

5. Learned APP strongly opposed for the same and submitted that considering the victim was only 12 years 5 months at the time of incident, her consent was not relevant. The evidence of the victim supporting the prosecution case. Thus, the

application itself is devoid of merits, and therefore, liable to be rejected.

6. After hearing both sides and on perusal of the entire evidence on record, it reveals that in support of the prosecution case, the prosecution has examined in all nine witnesses, where the crux of the prosecution is on the evidence of the victim. I have also perused the cross-examination of the victim as well as the evidence of the Medical Officer. From the evidence of the victim, learned Counsel for the applicant has pointed out that he has many arguable points in the present appeal. He has also pointed out from the impugned judgment that he has fair chances of acquittal. Admittedly, at this stage, the reappraisal of the evidence is not permissible what is to be seen is that whether the applicant has fair chance of acquittal. This aspect is also 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** wherein the Hon'ble Apex Court observes 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.

7. In the light of the above observation, if the facts of the present case are taken into consideration, admittedly the learned Counsel for the applicant has pointed out from the evidence of the victim and from the impugned judgment that he has many arguable points in the present appeal, but considering the appeal would take its own time for its final disposal, the application for grant of suspension of sentence deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence passed in Special (POCSO) Case No.38/2020 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 of the like amount.

The application is disposed.

CRIMINAL APPEAL NO.385 OF 2024

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

(URMILA JOSHI-PHALKE, J.)