



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

CRIMINAL APPLICATION (APPA) No. 804 OF 2024 IN
CRIMINAL APPEAL NO. 455 OF 2024

Sanjay S/O Premal Raut 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. S.A. Walde, counsel for applicant/appellant.
Mrs. Ritu Sharma, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/02/2025.

1. By this application, the applicant is seeking suspension of sentence and releasing the applicant/appellant on bail.
2. The applicant is prosecuted for the offence punishable under Sections 376(AB), 376(2)(f), and 506 of the Indian Penal Code, 1860; and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
3. The crime is registered on the basis of a report lodged by the mother of the victim girl, on an allegation that the victim girl aged about 6 years and 9 months old. On 08/08/2020, when they had been to their agricultural field for work and the victim was playing at home along with her friends, the present applicant/accused took her and subjected her for sexual assault. This incident is also witnessed by two other child witnesses. On the basis of the said report, police have registered the crime against the present applicant. After recording the evidence and after appreciating the same, the

learned Special Court held him guilty and sentenced him to suffer rigorous imprisonment for 20 years for the offence punishable under Section 376 (AB) of the Indian Penal Code and to pay a fine of Rs.5,000/-, in default, rigorous imprisonment for three months. The applicant is further convicted for the offence punishable under Section 506 and sentenced to suffer rigorous imprisonment for three years and fine of Rs. 2000/- in default, rigorous imprisonment for two months. He is further convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and sentenced to suffer rigorous imprisonment of 20 years.

4. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the applicant/accused on the ground that the evidence adduced by the prosecution is inconsistent, and due to the previous enmity, he is implicated in the alleged offence. There are many arguable points in the present appeal. The appeal would take its own time for its final disposal, and in the meantime, if the sentence is executed, the appeal would become infructuous.

5. In support of his contention, he placed reliance on *Pradeep Vs State of Haryana [2023 SCC OnLine SC 777]*, wherein the Hon'ble Apex Court has held that a child witness is easily susceptible to tutoring. The conviction is solely based on the testimony of the child witnesses. The trial court believed only the child witnesses and convicted the accused. In view of that, the application deserves to be allowed.

6. The learned APP strongly opposed the application on the grounds that the evidence of the victim, corroborated by her friend and supported by medical evidence, sufficiently shows that there is ample material. Based on this sufficient evidence, the trial court convicted the present applicant. At this stage, re-appreciation of the evidence is not permissible, and hence the application deserves to be rejected

7. After hearing both sides and on perusal of the evidence on record, it reveals that the present applicant is prosecuted for the offence punishable under Sections 376(2) (f), 376(AB), and 6 of the Protection of Children from Sexual Offences Act, 2012. There is no dispute as far as the age of the child is concerned; she was 6 years and 9 months at the time of the incident. It further reveals that her evidence shows that she was subjected for the sexual assault by the present applicant by taking her in his house. The said witness in the said incident is witnessed by her friends also, out of which one friend is examined by the prosecution before the Court, and she has supported the prosecution case. The medical evidence also shows that during the medical examination, the vagina of the victim was found inflamed, and redness was also noted by the medical officer.

8. Thus, considering the entire evidence on record, at this stage, there is no arguable points in in the present appeal, and there is no sufficient material to held that the applicant is having chance of success in the present appeal. As far as the re-appreciation of the evidence, at this stage is concerned, which is not permissible.

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***, while dealing with the application under Section 489 as observed 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.P.C. 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 the case in hand, what the Court has to see is whether the applicant has a chance of success in the present appeal, considering 6 years and 9 month old girl was

subjected for the sexual assault by the present applicant. The evidence on record was sufficiently appreciated by the trial Court while convicting the applicant. At this stage, I do not find it is a fit case wherein suspension can be granted.

In view of that, the criminal application (APPA) No. 804 of 2024 deserves to be **rejected**. Accordingly, it is rejected.

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

[URMILA JOSHI-PHALKE, J.]