



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

CRIMINAL APPLICATION (APPA) NO. 749 OF 2024 IN
CRIMINAL APPEAL NO. 425 OF 2024

Ashok S/O Ramaji Uke Vs The 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, counsel for applicant/appellant.
Mrs. Swati Kolhe, APP for non-applicant/State.
Mr. Abdul Subhan, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/01/2025.

1. By preferring this application, the appellant is seeking suspension of sentence and releasing the appellant on bail in Sessions Case No. 42/2020, by convicting the appellant for the offence punishable under Section 376(2) (1) of the Indian Penal Code and sentenced to suffer R.I. for 12 years; and for the offence punishable under Section 452 of the Indian Penal Code, R.I. for three years.

2. Heard learned counsel for the appellant, who submitted that, as per the prosecution case, the victim was a partially mentally retarded woman who was subjected for the forceful sexual assault by the present appellant, and therefore offence was registered against him. After recording the evidence, the learned Special Court placed reliance on the medical evidence and the evidence of the mother of the victim, as the victim could not be examined because during

the pendency of the Sessions Trial, she died. For which, the appellant was convicted. He submitted as far as the medical evidence is concerned, which is silent. As to the forceful sexual assault, no injuries are found on the person of the victim.

He also invited my attention towards the evidence of the P.W. 1 mother of the victim and submitted that the evidence of the victim is only to the extent that the appellant left over on the person of the victim. As far as the penetrative sexual assault is concerned, either the medical evidence or oral evidence shows that there was a penetrative sexual assault. Moreover, the appellant has already undergone half of the sentence. Considering all these aspects and considering the fact that the appeal would take its own time for its final disposal. The sentence be suspended and the appellant be released on bail.

3. Learned APP and learned counsel for the non-applicant No.2/victim strongly opposed the said application and submitted that the mentally retarded woman was subjected for forceful sexual assault, and the medical evidence sufficiently shows the involvement of the present appellant in the alleged offence. The appeal can be disposed of finally in view of that, prays for rejection of the application.

4. After hearing both sides and on perusal of the entire evidence on record, which is filed by learned counsel for the appellant. The evidence of the medical officer, which was

shown to me by the learned counsel, shows that no internal injuries are found during the medical examination of the victim. Admittedly, the victim was not available before the Court, as she was reported to be dead. It was also pointed out that the evidence of the victim is only to the extent that she had seen the appellant slept over on the person of the victim. Considering all these aspects, he submitted that the appellant has every chance of success in the present appeal.

5. As far as the re-appreciation of the evidence, at this stage is concerned, which is not permissible. This aspect is also considered by 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*, wherein, by referring the earlier decision, the Hon'ble Apex Court held that bearing in mind the aforesaid principles of law, the endeavor 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 all 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 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.

6. In the case in hand, learned counsel for the appellant has pointed out from the evidence on record that he has every chance of success in the present appeal. In view of that, the appellant has made out a case for grant of suspension of sentence. In view of that, the application is allowed. Accordingly, I proceed to pass the following order.

- a] Application is allowed.
- b] The execution of the sentenced passed in Sessions Case No. 42/2020 an is hereby suspended till disposal of the appeal.
- c] The appellant shall be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- d] The appellant shall attend the Court of Additional Sessions Judge, Wardha on 5th of Every month, and the Additional Sessions

Judge, Wardha shall record his presence till disposal of the appeal.

7. The criminal application (APP) No. 749 of 2024 is disposed of.

CRIMINAL APPEAL NO. 425 OF 2024

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

[URMILA JOSHI-PHALKE, J.]