



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

CRIMINAL APPLICATION (APPA) NO.887 OF 2024
IN
CRIMINAL APPEAL NO.516 OF 2024

Ajay s/o Murlidhar Nannaware

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Nagbhid, 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. Aniruddha Jaltare, Counsel for the applicant.

Mr. C. A. Lokhande, 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 offences punishable under Sections 376(1), 376(D), 305 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act. As per the allegations, on 07.08.2020 the informant left the home at 7.00 a.m. for attending the work in the agricultural field, at that time, her daughter aged about 16 years old was at home. In the evening at 6.00 p.m., when the informant returned victim was not at home and therefore, she took search of the victim. Her neighbour Anandabai Meshram told her that victim went in the agricultural field. As there

was a dark she took neighbours along with her and searched the victim, her neighbour found one chit wrapped in a plastic bag to polythene bag along with a pen. It was a suicide note wherein it was mentioned that the present applicant and another co-accused subjected her for the sexual assault and therefore, she is committing suicide. Initially, the report is lodged about the missing of the victim wherein the allegation regarding the sexual assault on the victim was not alleged. During the investigation, the various statements were recorded and the specimen handwriting of the victim is also collected, it was compared and the handwriting report was received. After completion of the investigation, charge-sheet is filed against the present applicant.

3. After appreciation of the evidence, the learned trial Court held the present applicant as well as the other co-accused guilty and sentenced him to suffer rigorous imprisonment of 20 years for the offence punishable under Section 6 and fine of Rs.25,000/- in default of payment of fine simple imprisonment for six months. The applicant further convicted for the offence punishable under Section 305 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and also liable to pay fine of Rs.25,000/-. The applicant further convicted of the offence punishable under Section 376(D) but no separate sentence is imposed.

4. Being aggrieved and dissatisfied with the same, the present appeal is preferred along with the application for suspension of sentence.

5. Heard learned Counsel Mr. Jaltare for the applicant who submitted that except the suicide note, there is no other material collected by the prosecution and no evidence is adduced by the prosecution to show the involvement of the present applicant. The applicant was not seen either at the spot of incident or in the company of the victim by any of the witnesses. As far as the findings of the trial Court is concerned, it is only on the assumption and on the basis of the suicide note and opinion of the handwriting expert. He submitted that the opinion of the handwriting expert is not a substantial evidence. The appellant has many chances of success in the present appeal as there are many arguable points in the present appeal. However, the appeal would take its own time for its final disposal and in the meantime, if the sentence is executed, then appeal would become infructuous. He submitted that the evidence of the prosecution witnesses which is circumstantial in nature and even the medical evidence is not sufficient to show the involvement of the present applicant in the alleged offence.

6. Learned APP strongly opposed the said application on the ground that the statement of the witlessness namely PW-5 and PW-9 who have seen

the victim when she was weeping prior to the incident. Though victim has not disclosed the said incident to them, but no probable reason came forward before the Court regarding the false implication of the present applicant by the victim. Admittedly, the victim is not available to narrate against the present applicant and therefore, the entire reliance of the prosecution is on the circumstantial evidence. The circumstances that victim was seen in the agricultural field thereafter she was seen weeping by the two witnesses. The medical evidence shows the injury on her person. The possibility of sexual assault on the victim cannot be ruled out is the opinion of the Medical Officer. As far as the defence of the accused is concerned, there was no enmity between the family of the victim and the present applicant so there is no reason to implicate the present applicant in the alleged offence. The handwriting expert's opinion after comparison shows the similarity between the two documents i.e. the suicide note and the specimen handwriting of the present applicant. The spot of incident as to the sexual assault is revealed on the basis of the statement of the co-accused. Thus, considering all these circumstances, the trial Court has convicted the applicant and therefore, no case is made out for suspension of sentence.

7. After hearing both the sides and on perusal of the entire evidence on record admittedly,

the case is rested on the circumstantial evidence. The entire case is revolves around the suicide note. The neighbour of the informant has stated that the victim had been to the agriculture field. The suicide note was also found on the boundary of the agriculture field wrapped in the polythene bag. PW-5 and PW-9 were witnessed the victim, when she was weeping. Though they have inquired with her, but she has not disclosed any incident to them. The suicide note is written in four lines stating the names of the present applicant and the other co-accused. During the cross-examination, nothing is brought on record to show that there is any other reason to implicate the present applicant in the alleged incident. The handwriting in suicide note and the specimen handwriting shows the similarity. The spot of incident is also revealed on the basis of the statement of the co-accused. The learned Special Court has appreciated the evidence and thereafter, come to the conclusion that the evidence which is adduced by the prosecution is sufficient to warrant the conviction and accordingly, the applicant is convicted.

8. As far as the law regarding the suspension of sentence is concerned by referring the catena of decision 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 the Hon'ble Apex Court in para No.33 observers as under:

"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."

9. In the case in hand, the trial Court has come to the conclusion on the basis of the circumstantial evidence and convicted the present applicant/appellant. At this stage, there is no ground made out by the present applicant to show that he has every chance of success in the present appeal.

The arguable points which are also considered at this stage. It is insufficient to arrive at a conclusion that the acquittal at the hands of this Court is impossible in the present appeal, therefore, the application deserves to be rejected. Accordingly, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)