



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.943 OF 2024

IN

CRIMINAL APPEAL NO.537 OF 2024

(Sachin s/o Pandurang Meharkure 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. A.M. Chandekar, Advocate for the appellant.
Mr. V.A. Thakare, APP for State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 18, 2025.

Heard.

2. Present application is filed by the appellant for seeking suspension of sentence and releasing him on bail.

3. The appellant was prosecuted of the offence punishable under Sections 377, 511 and 506 of the Indian Penal Code and Sections 6 and 18 of the Protection of Children from Sexual Offences Act, 2012 on an allegation that he has subjected a 12 years boy for the unnatural sexual intercourse. On the basis of the said report, the investigation was completed and charge-sheet is filed. After appreciation of the evidence the Additional Sessions Judge, Warora held the appellant guilty and sentenced him to suffer rigorous imprisonment for 20 years and to pay fine of Rs.5000/- in default further rigorous imprisonment for three months.

4. Learned Counsel for the appellant submitted that as far as the evidence of eye-witness PW-3 is concerned, which is rejected by the Sessions Court. The victim boy has admitted that there was no penetrative sexual assault on him. The DNA report is also not supported the prosecution case. There is no specific opinion by the Medical Officer as to the sexual assault on the victim boy. He submitted that the general opinion is given that the sexual assault on the victim boy cannot be ruled out. Thus, he submitted that he has many arguable points in the present appeal and he has every chance of success in the present appeal but the appeal will take its own time for its final decision. In the meanwhile, if sentence is executed then appeal will become infructuous. In view of that, the application for suspension of sentence be allowed.

5. Learned APP strongly opposed the application on the ground that not only the evidence of the victim boy but it is also corroborated by PW-3 and the medical evidence. The DNA report is also supported to the prosecution case. At this stage, reappreciation of the evidence is not permissible. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the sides. Perused the impugned judgment and the evidence on record. The victim boy has admitted that there was no insertion of the private part by the accused. The medical

evidence is also silent as far as the injuries on the person of the victim boy is concerned. The DNA report also not supporting the prosecution case. Admittedly, at this stage, reappraisal of the evidence is not permissible but what is to be seen whether the appellant is succeeded in pointing out that he has many arguable points in the present appeal. This aspect is also considered by the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary in Criminal Appeal No.1331-1332/2023 decided on 02/05/2023*** along with the connected appeals dealt with the aspect of suspension of sentence in para No.33 which is reproduced hereunder :

33. 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 case in hand considering that the victim boy has not sustained any injuries. The admission given by him and the evidence of the eye-witness which appears to be improbable. The appellant has pointed out that he has many arguable points in the present appeal, and therefore, the application deserves to be allowed. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The execution of the sentence passed by the Additional Sessions Judge, Warora in Special (POCSO) Case No.24/2017 dated 18/07/2024 is hereby suspended till disposal of the appeal.

(iii) The appellant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend the Special Court i.e. Additional Sessions Judge, Warora on first day of every month till disposal of the appeal.

(v) The appellant shall not enter into the vicinity of Nehru Ward, Chimur, Taluka Chimur, District Chandrapur till disposal of the appeal.

8. The application is disposed of.

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Heard.

2. The appeal is already admitted and R. & P is already received.

3. Place the matter before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)