



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

CRIMINAL APPLICATION (APPA) NO.1018 OF 2024
IN
CRIMINAL APPEAL NO. 586 OF 2024

Ranjit Kishan Parwe

Vs.

State of Maharashtra, through Police Station, Andhera, District Buldhana

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

Court's or Judge's orders

Mr. B. J. Lonare, Counsel for the applicant.
Ms. Sneha Dhote, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/02/2025

1. By this application, the applicant is seeking suspension of sentence and releasing him on bail.
2. The applicant was prosecuted for the offence punishable under Sections 363, 366-A, 376(2)(j)(n) of the Indian Penal Code and under Sections 6 and 10 of the Protection of Children from Sexual Offences Act.
3. As per the case of the prosecution, 16 years old girl was taken by the present accused/applicant, who is her aunt's son and subjected her for forceful sexual assault. On the basis of the said report, police have registered the crime. The learned Special Judge has recorded the

evidence and after appreciating the same convicted the applicant as follows:

The accused/applicant is convicted under Section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.1,000/-, in default to suffer simple imprisonment for two months. He is also convicted for the offence punishable under Section 366-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and pay fine of Rs.2,000/-, in default to suffer simple imprisonment for three months. The applicant is further convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for 10 years and pay fine of Rs.2000/-, in default to suffer simple imprisonment for three months. The applicant is also held guilty for the offence punishable under Section 376(2)(j)(n) of the Indian Penal Code, but no separate sentence is imposed. The applicant is also held guilty for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, but no separate sentence is imposed.

4. Heard learned Counsel for the applicant, who submitted that there was a love affair between the victim and the present applicant and out of a love affair there was a physical relationship. However, this aspect is not considered by the learned Special Court while imposing the sentence. He submitted

that the statement of the victim and the evidence of the prosecution itself shows that the victim stayed along with the present applicant for 15 – 20 days, she never made any grievances. This aspect is also not considered by the learned Special Court while imposing the punishment. He submitted that the applicant has many arguable points in the present appeal, but the appeal would take its own time for its final disposal. In the meantime, if the sentence is executed then the appeal will become infructuous. For all above these terms, the execution of the sentence be suspended and the applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that appeal itself is devoid of merits and liable to be dismissed. At this stage, reappraisal of the evidence is not permissible.

6. After hearing both sides and on perusal of the entire evidence as well as impugned judgment, it reveals that the victim allegedly taken by the present applicant and thereafter, the physical relationship was developed between them. It also reveals from the evidence that there is a relationship between the victim and the present applicant and the victim went along with the present applicant and stayed along with him for 20 days. There is no grievance made by the victim though she stayed along with the applicant. From the evidence it further reveals that

the FIR is lodged after one month of the incident. The learned Counsel for the applicant has pointed out that he has many arguable points in the present appeal. Admittedly, the appeal would take its own time for its final disposal. In the meantime, if the sentence is executed then the appeal would become infructuous. Admittedly, at this reappraisal of the evidence is not permissible. What is to be seen is only whether the applicant is succeed in pointing out that he has a chance of success in the present appeal. This aspect is also dealt by the Hon'ble Apex Court in the case **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** and it is observed that "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 and considering the facts and the evidence of the present case, the applicant is succeeded in showing that he has many arguable points in the present appeal and having a chance of success in the present appeal. Considering the same, the application for suspension of sentence deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of sentence passed in Special Case No.43/2016 is hereby suspended till the 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 of.

CRIMINAL APPEAL NO. 586 OF 2024

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

(URMILA JOSHI-PHALKE, J.)