



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

CRIMINAL APPLICATION NO.924 OF 2023

IN

CRIMINAL APPEAL NO.566 OF 2023

(Dhanraj s/o Tanbaji Neware Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Band, Advocate for the appellant.
Mrs. R.V. Sharma, APP for the State.
Ms A.P. Murrey, Advocate (appointed) for respondent No.2

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 16, 2025.

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant was prosecuted of the offence punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code.

3. Learned trial Court held the accused guilty and sentenced to suffer rigorous imprisonment for the period of 10 years and to pay fine of Rs.5000/- in default of payment of fine to suffer Simple imprisonment for three months.

4. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant.

5. Learned Counsel for the appellant submitted that the appellant is prosecuted on the basis of the report

by the younger sister of the victim on an allegation that the appellant has subjected her for the sexual assault taking disadvantage of her mental retardation and deaf and dumb. It is further alleged that as the victim was pregnant, therefore, she was taken to the hospital and enquiry was made and during enquiry it revealed that the present appellant has subjected her for the sexual assault. Subsequently, the victim has delivered a child. The samples of DNA examinations are also obtained and on DNA sample analysis it revealed that the victim and the present appellant are the biological parents of the child delivered by the victim. After completion of the investigation, charge-sheet was submitted.

6. He submitted that as far as the evidence of the victim is concerned no documents are brought on record by the prosecution to show that either victim is suffering from mental retardation or she is deaf and dumb girl. Admittedly, as she was not answering the questions during recording of the evidence, the assistance of the experts was obtained and thereafter her evidence was recorded. He also invited my attention towards the cross-examination of the victim wherein she has specifically admitted that the present appellant was treating her with love and affection. She further admits that she was never subjected for the sexual assault by the present appellant but there was love relationship between her and the present appellant which she answered in 'Yes'. He submitted that the appellant is behind bar for more

than four and half years. Thus, substantial sentence he has already undergone. The appeal would take its own time for its final disposal. In the meantime, if sentence is executed then the appeal would become infructuous. Moreover, the punishment imposed is of a limited period,

7. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of ***Kamal Vs. State of Haryana (2004) 13 SCC 526*** wherein the Hon'ble Apex Court has considered that the appellant therein was convicted under Section 304-B and sentenced to suffer imprisonment for seven years so far as the appellant has undergone imprisonment for about two years and four months and in view of that, the sentence was suspended.

8. Learned APP and learned Counsel for the victim strongly opposed the application on the ground that the appeal itself is devoid of merits. The mentally retarded girl who is deaf and dumb is subjected for the sexual assault. In view of that, the application deserves to be rejected.

9. I have heard learned Counsel for both the parties. Perused the evidence on record. There is no dispute as to the fact that the Investigating Officer has also admitted during cross-examination that he has not collected any document but show the victim is suffering from mental retardation. There is no document produced

on record to show that she is deaf and dumb girl. The assistance of the expert was taken as the victim was not answering properly and with the help of the Expert assistance the evidence of the victim was recorded. During cross-examination, she has admitted regarding her love affair. Whether the consent was obtained or whether there was any consent or not, admittedly is an aspect which is to be considered at the time of disposing the appeal.

10. At this stage, considering the fact that the appellant is behind bar for more than four and half years and the appeal would take its own time for its final decision. Moreover, the punishment imposed is for a limited period. The learned Counsel submitted that he has many arguable points in the present appeal.

11. 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.

12. Thus, in the light of the above observation of the Hon'ble Apex Court and considering the facts of the present case, the appellant has made out a case for grant of suspension of sentence. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 31/10/2022 passed by the Special Judge, Nagpur in Sessions Trial No.270/2020 is hereby suspended till final disposal of the appeal.

(iii) The appellant - Dhanraj s/o Tanbaji Neware 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 which is constituted for the disabled persons and for the Scheduled Caste and Scheduled Tribes on 5th of every month and the Special Court shall record his presence till the disposal of the appeal.

13. The application stands disposed of.

CRIMINAL APPEAL NO.566 OF 2023

Heard.

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

3. Place the appeal before the Court for the final disposal after preparation of the paper book as per its turn.

(URMILA JOSHI-PHALKE, J.)