



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

CRIMINAL APPLICATION NO.821 OF 2024

IN

CRIMINAL APPEAL NO.465 OF 2024

(Anil s/o Bajirao Madavi 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. K.G. Rathi, Advocate (appointed) for the appellant.
Ms R.V. Sharma, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 14, 2025.

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

2. The appellant was prosecuted of the offence punishable under Sections 376, 506-II, and 202 of the IPC read with Section 34 of the Indian Penal Code and under Sections 4, 6 and 21(1) of the Protection of Children from Sexual Offences Act, 2012.

3. As per the prosecution case, the informant who is the mother of the victim lodged FIR alleging that on 17/01/2018 when she was present in the house, the victim girl who was 11 years of age had come back from the school and she asked the victim to go to the pond for washing the clothes. Accordingly, at about 2.00 PM, victim girl went to the pond for washing the cloths and at about 3.45 PM she returned back from the pond. At the relevant

time, the accused Anil who was her neighbour came towards her in a drunken condition and laid down himself on the bed and started murmuring by saying that "He played mischief with his niece but nothing happened and I don't know whether Pungati lady discloses the same to the villagers" and therefore, she suspected and she made enquiry with the victim girl and victim girl has disclosed that the present appellant has subjected her for the forceful sexual assault. On the basis of the said report, police have registered the crime against the present appellant.

4. After completion of the investigation, the charge-sheet was submitted against the accused and the prosecution has examined in all 9 witnesses in support of the prosecution case. The material witnesses on which prosecution placed reliance on is the evidence of the victim who is aged about 11 years and the medical evidence. On the basis of the same, the trial Court held the accused guilty and sentenced him. As per the order of the Special Judge the offence under Section 376(2)(i) and 506-II of the IPC as well as Sections 4 and 6 of the POCSO Act are proved against the present appellant. He is convicted of the offence punishable under Section 6 of the POCSO Act to suffer rigorous imprisonment for twenty years and to pay fine of Rs.75,000/- in default of payment of fine he shall undergo further rigorous imprisonment for one year. He is further sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.25,000/-

of the offence punishable under Section 506-II of the IPC and in default of payment of fine he shall undergo further rigorous imprisonment for three months.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant and he is seeking suspension of sentence.

6. Learned Counsel for the appellant submitted that there is inordinate delay in lodging the FIR. The evidence of the victim and the mother is not consistent. As per the evidence of the victim prosecutrix had been to the pond at about 2:00 PM and thereafter she again attended the school whereas the evidence of the mother shows that she had been to the house at 2:00 PM and she was sent for washing the clothes at pond and after returning, she has disclosed the incident. There is no corroboration to the evidence of the victim, and therefore, it is not inspiring the confidence. He further submitted that the case of penetrative sexual assault is not made out against the present appellant. The medical evidence is not adduced to show that she was subjected for the penetrative sexual assault. In view of that also the appellant has every chance of success in the present appeal, and therefore, the execution of the sentence be suspended as the appeal would take its own time for its final disposal. He further submitted that as mother of the victim has also admitted that she has not received the money of Rs.12,000/- towards the settlement, and

therefore, the report was not filed is not taken into consideration.

7. Learned APP strongly opposed the said application and submitted that 11 years girl was subjected for the forceful sexual assault. Not only the evidence of the victim but the evidence of PW-7 - Sukhdev Kewalram Gahane who was serving as a Teacher and the medical evidence shows the involvement of the present appellant in the alleged offence. The 11 years girl was subjected for the sexual assault. The injuries which were noticed by the Medical Officer after seven days of the incident speaks for itself. At this stage, re-appreciation of the evidence is not to be done but what is to be seen is whether the appellant is having any chance of success in the present appeal. In view of that, the application deserves to be rejected.

8. I have heard learned Counsel for both the parties. Perused the impugned judgement as well as the evidence on record. The evidence of the victim was recorded wherein she has narrated the entire incident. As far as the defence of the accused is concerned that the mother of the victim was demanding some money which was denied to be paid, and therefore, the appellant is falsely implicated is denied by the victim. Though mother of the victim has admitted that there was a meeting in the village and the appellant has agreed to pay the amount of Rs.12,000/- and the same was not paid, and therefore, the alleged FIR is lodged. Even if, taken into consideration the

evidence of the victim shows that she was subjected for the penetrative sexual assault which appears to have been corroborated by the medical evidence as well as evidence of PW-7 i.e. the Teacher Sukhdev Kewalram Gahane which shows that he has noticed the accused Anil Madavi in the play ground of the school on the day of incident. The medical evidence also shows that the Medical Officer has witnessed various injuries not only on her breast but also on her private part. Admittedly, the re-appreciation of the evidence, at this stage, is not to be done. What is to be seen is whether the appellant has made out a case to show that he has fair chances of acquittal in the present appeal. This aspect is dealt 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. After considering the catena of decisions as to the principle while considering the application under Section 389 of Cr.P.C. for suspension of sentence, the Hon'ble Apex Court held in para No.33 as under:

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.

9. In the case in hand what the evidence on record shows that the 11 years girl was subjected for the forceful sexual assault, the evidence of the victim is not only corroborated by the witnesses but is also corroborated by the medical evidence. At this stage, whether the evidence suffering from any infirmities and whether that infirmities goes to the root of the case are to be seen. At this stage, nothing is brought before the Court to show that there are fair chances of acquittal are shown

by the present appellant. In view of that, the application for suspension of sentence deserves to be rejected.

10. Accordingly, the application is rejected.

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Heard.

2. R. and P. is already received.

3. Considering the appellant is behind bar, the office to prepare the paper book.

4. Learned Counsel for the appellant submitted that the appellant is behind bar since last 7 years.

5. Considering the punishment imposed to the appellant is of 20 years, office to expedite the preparation of the paper book and after preparation of the paper book appeal be listed for the final disposal out of turn.

(URMILA JOSHI-PHALKE, J.)