



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

CRIMINAL APPLICATION NO.1052 OF 2023

IN

CRIMINAL APPEAL NO.651 OF 2023

(Sarangdhar @ Sarya Prabhakar Kahate 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. Mardikar, Advocate a/b Mr. V.R. Deshpande, Advocate for the
appellant.
Ms S.S. Dhote, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for respondent No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 9, 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 Section 376(3), 363, 368, 354-A and
354-B of the Indian Penal Code and Sections 4(2) and 8 of
the Protection of Children from Sexual Offences Act, 2012.

3. The crime is registered on the basis of report
lodged by the victim on an allegation that at the relevant
time she was aged about 15 years and on 16/10/2021 at
about 3.00 PM when she along with her cousin had been
to 'paikhana' which is open place near village and she was
returning back, at the relevant time, the accused caught
hand and dragged her towards his house and subjected
her for the forceful sexual assault. To prove the

prosecution case, the prosecution has examined in all 8 witnesses including the victim and also relied upon various documents.

4. After appreciating the evidence, the learned Special Judge held the appellant guilty and sentenced him to suffer rigorous imprisonment for 20 years and to pay fine of Rs.50,000/- of the offence punishable under Section 376(3) of the IPC and in default further rigorous imprisonment for two years. The accused is further convicted of the offence punishable under Sections 354-A and 354-B of the IPC and under Section 8 of the POCSO Act and sentenced to suffer rigorous imprisonment of three years and to pay fine of Rs.3000/- in default to suffer R.I. for three months. The appellant further convicted of the offence punishable under Section 363 and 368 of the IPC and sentenced to suffer rigorous imprisonment of three years and to pay fine of Rs.3000/- in default to suffer R.I. for 3 months.

5. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant on the ground that learned Special Court has not appreciated the evidence in proper perspective and erroneously convicted him.

6. Learned Senior Counsel for the appellant taken me through the entire evidence and submitted that the prosecution has not proved the age of the victim. He

also pointed out from the cross-examination that as per the evidence of the victim, her birth as well as her education took place at Ambhoda whereas the birth certificate is from village Harsod. The victim is cross-examined on the point of her age as well as the other aspects. He submitted that there is inconsistent evidence of PW-1 victim and PW-3 who was along with the victim at the relevant time. The CA report shown as a negative whereas the seized cloths of the victim shows that there was washed blood stained on the inner garments of the victim. He further submitted that the evidence of the victim as to the actual incident and spot of incident is also inconsistent. The evidence of the defence witness who is a Civil Engineer namely Anil Bhaskarrao Dhekale shows that the alleged spot of incident is surrounded by the residential locality. The alleged incident has taken place during the day time and no independent witness has come forward at least to show that the victim was shown along with the accused. Thus, there are various grounds raised by the learned Senior Counsel to show that the appellant has many chances of success in the present appeal but the appeal would take its own time for its final decision. In the meantime, if sentence is executed the appeal would become infructuous.

7. Learned APP strongly opposed the application and submitted that the age of the victim is 15 years is duly proved by the prosecution. The evidence of the victim corroborated by the evidence of PW-3 and the medical

evidence sufficiently shows the involvement of the present appellant in the alleged incident.

8. Learned Counsel for respondent No.2 endorsed the same contention and both have prayed for the rejection of the application.

9. I have heard learned Counsel for both the sides. Perused the evidence of the victim as well as the evidence of PW-3, the medical evidence and the forensic lab evidence and the evidence of the defence witness. As far as the age of the victim is concerned the entire prosecution case rested upon the birth certificate. The victim has admitted during the cross-examination that her education as well as birth took place at Ambhoda whereas the birth certificate issued by the BDO, Malkapur showing that the birth date was registered at Harsoda. It is pertinent to note that the name of the mother is not mentioned in the birth certificate. There is no explanation from the prosecution as to this aspect. The evidence of the victim and evidence of PW-3 has also shown by the learned Senior Counsel and inconsistencies are pointed out. Learned Senior Counsel has also pointed out the inconsistencies as to the medical evidence and the evidence as to the forensic lab i.e. the chemical analysis report. Admittedly, at this stage, re-appreciation of the evidence is not to be done but what is to be seen whether the appellant has shown the case to show that he has fair chances of success 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 wherein the Hon'ble Apex Court held that from perusal of Section 389 of Cr.P.C. it is evident that under no any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage. The Hon'ble Apex Court further held 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.

10. In the case in hand what is to be seen is that whether the appellant is succeeded in showing that he is many chances of success or fair chance of success in the appeal.

11. Learned Senior Counsel has pointed out various aspects and shown that he has many arguable points in the present appeal. Considering the same, 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 05/08/2023 passed by the Special Judge, Malkapur, District Buldhana in Special (POCSO) Case No.65/2021 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Sarangdhar @ Sarya Prabhakar Kahate be released on bail on executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty thousand) with one surety, in the like amount.

(iv) The appellant shall attend the Special Court once in a month i.e. 5th day of every

month and Special Court shall record his presence.

12. The application stands disposed of.

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Heard.

2. R. & P. is already received.
3. Office to prepare the paper book and appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

**Divya*