



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

CRIMINAL APPLICATION NO.293 OF 2023

IN

CRIMINAL APPEAL NO.168 OF 2023

(Ramadhar s/o Punwu Shendur 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

Ms K. Deshpande, Advocate (appointed) for the appellant.
Mr. C.A. Lokhande, APP for the State.
Ms S.K. Phaltankar, 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 376AB of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The allegation against the present appellant is that the victim and the accused are the neighbours and incident took place on 23/10/2019. The appellant who is aged about 57 years on giving the coin of Rs.5/- sexually assaulted the victim girl. On the basis of the said report, police have registered the crime against the present appellant. During trial the prosecution has adduced the evidence. On appreciating the evidence, learned Special

Judge pleased to convict the accused under Section 376AB of the IPC and sentenced him to suffer rigorous imprisonment of 20 years and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year.

4. Learned Counsel for the appellant submitted that there are various infirmities in the evidence of the prosecution. Despite of the same, learned Special Judge has convicted the appellant. The appellant has many chances of acquittal in the present appeal; however, the appeal would take its own time for its final decision. In view of that, he prays for suspension of sentence and releasing the appellant on bail.

5. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the application on the ground that considering the 7 years girl was subjected for the sexual assault by the present appellant and not only the evidence of the victim but the medical evidence shows the involvement of the present appellant in the alleged incident. The medical evidence shows that hymen injury was present and edges were torn. Position of tear was 7 O'clock position. Thus, considering the 7 years girl was subjected for the sexual assault by the present appellant and there were external injuries on the person victim. Learned Special Judge has convicted the appellant, and therefore, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. On perusal of the evidence on record especially the evidence of the victim which shows that the present appellant called her in the house on giving the coin of Rs.5/- and thereafter subjected her for the sexual assault. At the relevant time, he has also given the coin of Rs.2/- to the sister of the victim. The medical evidence also shows that during medical examination, the external injuries are found on the person of the victim as well as the hymen injury was also present and edges were torn. Thus, at this stage, there is sufficient material to show that the conviction of the present appellant is on the basis of the material evidence which is adduced by the prosecution.

7. The law and the considerations regarding the suspension of sentence is 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 the Cr.P.C., it is evident that save and except the matter falling under the category of sub-section 3 neither 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.

8. By referring the catena of decisions, the Honorable 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. 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 re-appreciate the evidence at the stage of Section 389 of the Cr.P.C. 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.

8. Bearing in mind the above said principles if the facts of the present case and the evidence is taken into consideration, at this stage, there is nothing pointed out to show that any error is committed by the Sessions Court while convicting the accused. At this stage, there is sufficient material to show that the conviction of the accused is based on the evidence adduced by the prosecution. In view of that, no case is made out for grant of suspension of sentence. In view of that, the application deserves to be rejected.

9. Hence, the application is rejected accordingly.

10. The fees of the appointed Counsel who are appointed for the appellant as well as for respondent No.2 be quantified as per rules.

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R. & P. is already received.

2. The appellant is in jail.

3. The appeal can be disposed of.

4. Office to prepare the paper book and appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)