



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

CRIMINAL APPLICATION (APPA) NO.981 OF 2024
IN
CRIMINAL APPEAL NO.559 OF 2024

Manoj Uttam Dongre

Vs.

State of Maharashtra, through Police Station Deulgaon Raja, District
Buldhana and another

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

Court's or Judge's orders

Mr. S. S. Bhalerao, Counsel for the appellant.

Ms. Ritu Sharma, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/01/2025

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

2. The appellant – accused was prosecuted for the offence punishable under Sections 354-D, 363, 366, 376(2)(j)(n), of the Indian Penal Code and under Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act.

3. After appreciation of the evidence, the learned trial Court has convicted the accused and sentenced him to suffer rigorous imprisonment for 20 years and to pay fine of Rs.5000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 6 of the Protection

of Children from Sexual Offences Act. He is further convicted for the offence punishable under Sections 376(2)(j)(n) and 354-D of the Indian Penal Code but no separate sentence was imposed. He further convicted for the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- and in default to suffer simple imprisonment for one month and also under Section 366 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month. He is further convicted for the offence punishable under Sections 10 and 12 of the Protection of Children from Sexual Offences Act but no separate sentence was imposed.

4. Heard learned Counsel for the appellant who submitted that there was a love affair between the victim and the present appellant. Out of a love affair, the victim left the company of her parents and joined the company of the present appellant. They resided at Surat as husband and wife. Thus, the physical relationship was not out of lust, but it was out of a love affair. Learned trial Court has not considered the same and the maximum punishment is imposed. The appellant has every chance of success in the present appeal. However, it would take its own time for its final disposal and therefore,

the appellant be released on bail by suspending the sentence.

5. Learned APP strongly opposed the said application and submitted that considering the victim was minor at the relevant time, her consent is not relevant. The learned trial Court has passed the Judgment by assigning the reasons. In view of that, the application deserves to be rejected.

6. After hearing both the sides, I have perused the impugned Judgment as well as the evidence of the victim. The victim has left loyalty towards the prosecution during her evidence and specifically stated that there was a love affair between her and the present appellant and out of a love affair, she joined the company of the present appellant and stayed along with him. As far as the physical relationship as submitted by the learned Counsel for the appellant appears to be out of a love affair between the two youngsters.

7. The law is laid down by the Hon'ble Apex Court as far as the considerations while considering the application under Section 389 of Cr.P.C. concerned, in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** by referring its various decisions it is 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 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.

8. In the case in hand, the evidence of the victim which is pointed out by the learned Counsel for the appellant shows that out of a love affair, the victim has joined the company of the appellant and they stayed and there was a physical relationship out

of the love affair. Considering the evidence adduced by the victim and submitted by the learned Counsel for the appellant which is sufficient at this stage to show that the appellant has a fair chance of success in the present appeal. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence passed by the Special Court Buldhana in Special Case No.31/2019 is suspended till the disposal of the appeal.
- (iii) The appellant shall be released on bail on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall attend the Special Court till disposal of the appeal on 5th of every month and the Special Court shall record his presence.

The application is disposed of.

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- 1. Leave is granted to the appellant to delete the name of the respondent No.2.
- 2. Appeal is already admitted.
- 3. Record and proceeding is already received.

(6)

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4. Appeal be listed before this Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

Sarkate