



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

CRIMINAL APPLICATION (APPA) NO.1026 OF 2024
IN
CRIMINAL APPEAL NO.594 OF 2024

Amit @ Bapu s/o Vinodrao Darvekar
Vs.

State of Maharashtra, through Police Station Officer, Police Station
Ramnagar, District Wardha

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

Court's or Judge's orders

Ms. Sonali B. Khobragade, Counsel for the applicant/appellant.
Mr. V. A. Thakare, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/01/2025

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

2. The appellant was prosecuted for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act.

3. As per the prosecution case, the victim girl aged about 16 years was subjected for the sexual assault by the present applicant/appellant on the promise of marriage and thereafter, the said physical relationship resulted into the pregnancy and the victim and the appellant were concluded to be the

biological parents of the child delivered by the victim. On the basis of the said allegation, the crime was registered. The trial was conducted and during the trial, considering the victim is a minor girl subjected for the sexual assault on the promise of marriage, the appellant/applicant was convicted and sentenced to suffer rigorous imprisonment for ten years and fine of Rs.5,000/-, in default simple imprisonment for six months. He is further convicted for the offence punishable under Section 506 and sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/-, in default to suffer simple imprisonment for one month.

4. Heard learned Counsel for the applicant/appellant who submitted that the appellant is 21 years old and the victim is 16 years of age. Out of a love relationship, the physical relationship was developed between them. The learned trial Court has not considered the same and convicted the appellant. In fact, though the consent of the victim is not relevant, but the physical relationship was developed out of a love affair and the victim was on the verge of attaining the majority. Considering all these aspects, she submitted that the appellant has every chance of success in the present appeal, but the appeal would take its own time for its final disposal. In the meantime, if sentence is executed then the appeal would become infructuous.

5. Learned APP strongly opposed the application on the ground that the appeal itself is devoid of merits as the consent of the victim is not relevant, in view of that the application deserves to be rejected.

6. After hearing both the sides and on perusal of the impugned judgment and the evidence on record it reveals that due to the teenage love relationship, they came together and a physical relationship was developed between them. Admittedly, the consent of the victim is not relevant. At this stage, reappraisal of the evidence is not permitted, but considering that learned Counsel for the applicant/appellant has pointed out from the impugned judgment that she has many arguable points in the present appeal, the application deserves to be allowed. In view of that I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence passed in Special (Ch. Act) Case No.12/2017 is hereby suspended till disposal of the appeal.
- (iii) The appellant shall be released on bail on executing PR Bond of Rs.25,000/- with one solvent surety of the like amount.

The application is disposed of.

Criminal Appeal No.594/2024

- (i) Appeal is already admitted.
- (ii) Record and proceeding is already received.
- (iii) Appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)