



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

CRIMINAL APPLICATION NO.1092 OF 2023

IN

CRIMINAL APPEAL NO.623 OF 2023

(Mahendra Rajkumar Sukhdeve Vs. The 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.R. Fule, Advocate for the appellant.
Ms R.V. Sharma, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for respondent No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 6, 2025.

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

2. Learned Counsel for the appellant submitted that the appellant was prosecuted of the offence punishable under Sections 363, 366(A), 376(2)(n), 376(3) of the Indian Penal Code and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. From the impugned judgment he pointed out that he has many arguable points in the present appeal. The appeal would take its own time for its final disposal. In the meantime, if sentence is executed the purpose of preferring the appeal would frustrate. In view of that, he be released on bail and the execution of sentenced be suspended.

3. As per the allegation on 18/09/2020, the informant who is the father of the girl has lodged the

report on an allegation that victim aged about 16 years had left the house in his absence and not returned back. After due search she was not traced, and therefore, he approached to the police station. During investigation, victim was found at the house of the present appellant. The statement of the victim was recorded and it revealed that the present appellant took the victim on the promise of marriage and subjected her for forceful sexual assault. On the basis of the said statement, the crime was registered against the present appellant.

4. The Special Court has framed the charge against the accused and the prosecution has adduced the evidence to prove the charge. The basic reliance of the prosecution to prove the charge on the basis of the evidence of the victim who was aged about 16 years at the time of the incident. After appreciating the evidence, the trial Court held that the victim was minor at the relevant time and she was subjected for the sexual assault on the promise of marriage and convicted by sentencing him by imposing the punishment of rigorous imprisonment of 20 years and fine of Rs.3000/-, in default Simple Imprisonment for three months. The appellant is further convicted of the offence punishable under Section 363 as well as Section 366 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of three years and fine of Rs.1000/-, in default to suffer simple imprisonment for one month.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that learned trial Court has not considered the aspect that there was a love affair between victim and the present appellant and out of love affair she herself joined the company of the present appellant and stayed along with him. Due to the pressure of the parents, she deposed against the present appellant but during cross-examination she admitted that it was she who called the present accused on the day of incident and went along with him. Thus, he has many arguable points in the present appeal but if the sentence is executed the appeal would become infructuous. In view of that, he be released on bail and the execution of sentence be suspended.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the said application and invited my attention towards the deposition of the victim and submitted that on the promise of marriage, victim was abducted by the present appellant. The appellant is 30 years old whereas victim was only 16 years of age at the time of incident. The consent of the minor is not relevant and the learned trial Court has appreciated all these facts and convicted the appellant.

7. I have heard learned Counsel for both the parties. Perused the impugned judgement as well as the deposition of the victim from which it reveals that the victim has admitted that there was a love affair between

her and the present appellant. She has also admitted that on the day of incident, it was she who called the accused by making telephone call. The evidence further shows that she stayed along with the accused for 28 days. Thus, the contention of the learned Counsel for the appellant that these facts need to be appreciated in the light that though victim was below 18 years of age but on the verge of attaining the majority and out of love affair she went along with the accused. Thus, he has substantiated the contention that he has many arguable points in the present appeal. In view of that, 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 19/06/2023 passed by the Additional Sessions Judge (Special Judge, POCSO), Bhandara in Special Case (Child Protection) No.110/2020 is hereby suspended till final disposal of the appeal.
- (iii) The appellant – Mahendra Rajkumar Sukhdeve be released on bail on executing PR. Bond in the sum of Rs.25,000/- (Rs. Twenty Five thousand) with one surety, in the like amount.
- (iv) The appellant shall attend the court of Additional Sessions Judge (Special Judge,

POCSO), Bhandara on first day of every month and the Additional Sessions Judge (Special Judge, POCSO), Bhandara shall record his presence, till disposal of this appeal.

8. The application stands disposed of.
9. The fees of the appointed Counsel be quantified as per rules.

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Heard.

2. The appeal is already admitted. R. & P is already received.
3. Place the appeal before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)