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

CRIMINAL APPLICATION (APPA) NO. 1053 OF 2024
IN
CRIMINAL APPEAL NO. 595 OF 2024

Mohammad Yasin Nuru Islam Sheikh Vs State Of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. A.C. Jaltare, counsel for applicant/appellant.
Mrs. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/01/2025.

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

2. The appellant was prosecuted for the offence punishable under Sections 376(1), 354-A, 354-B, 354-D and 506 of the Indian Penal Code.

3. As per the allegation, on the day of the incident, i.e., on 4/06/2021, in the morning at about 5.30 a.m., she had been to answer the nature's call in open plot. At the relevant time, the present applicant pushed her, lifted her, and outraged her modesty as well as forcefully subjected her for the sexual assault. On the basis of the report and the investigation carried out by the investigation agency, the charge-sheet was filed against the present appellant. In support of the prosecution case, the prosecution has examined as many as 9 witnesses and learned trial Court held her guilty of the offence punishable under Section

376(1) and sentenced her to suffer rigorous imprisonment of 12 years and fine of Rs. 25,000/-, and in default, rigorous imprisonment of six months. She is further convicted for the offence punishable under Section 506 and sentenced to suffer rigorous imprisonment of one year and fine of Rs. 1,000/-, in default, simple imprisonment for 15 days.

4. Heard learned counsel for the appellant, he submitted that the informant/victim was a 63 years old lady and having children. Therefore, a ruptured hymen is not common. He has also invited my attention towards the cross-examination of the medical witness, i.e. P. W. 3, who has admitted during the cross-examination of a married woman. Ruptured of the hymen is not an uncommon thing. The medical witness further admitted during cross-examination that he has observed in the vaginal cavity of the victim is discharged, but it was not carrying semen and blood, which would be an inconclusive with regard to the allegations. He has also not observed any injuries on the wrist.

5. The learned counsel further submitted that the identity of the present appellant is also doubtful, as the victim has stated the name of “Asim Khan” in 164 of Cr.P.C. statement, whereas the name of the present appellant is Mohammad Yasin Nuru Islam Sheikh.

6. The learned Sessions Judge has not considered the same. He submitted that he has many arguable points in the present appeal, but the appeal would take its own time for its final disposal. In the meantime, the sentence is executed,

the purpose of preferring the appeal would be frustrated. In view of that, the sentence be suspended and the appellant be released on bail.

7. Learned APP strongly opposed the said application and submitted that a 63 years old woman was subjected for the forceful sexual assault. The hymen was completely ruptured. The evidence of the medical officer sufficiently shows, and as far as re-appreciation of the evidence is considered, which is not permitted at this stage. Thus, considering the same, the application deserves to be rejected.

8. After hearing learned counsel for the appellant and learned APP for the State, perused the entire evidence on record, including the evidence of the victim and the medical officer. There is no dispute as to the fact that no injuries are found on the person of the victim, though as per her allegations, she was sexually assaulted at the open ground, wherein a hard and rough surface was there. Admittedly, at this stage, re-appreciation of evidence is not permitted. What is to be seen is whether the appellant has any chance of success in the present appeal and whether there are many arguable points in the present appeal.

9. The Hon'ble Apex Court in the case of ***Omprakash Sahni vs Jai Shankar Chaudhary and another in Criminal Appeal Nos. 1331-1332 of 2023 decided on 02/05/2023*** by referring the catena of decision in para 33 observed as follows;

> *"33. 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."*

10. In the case in hand, learned counsel for the appellant submitted that through out the trial, he was on bail, and he has not misused the liberty, which was granted to him. He has also pointed out that he has many arguable points in the present appeal. Admittedly, the appeal would take its own time for its final decision, and in the meanwhile, if the sentence is executed, the purpose of preferring the appeal would be frustrated. The learned counsel also pointed out from the evidence that he has many chance of success in the present appeal. Considering all these aspects, the

application deserves to be allowed. Accordingly, I proceed to pass the following order.

a] The criminal application is **allowed.**

b] The execution of the sentence passed in Sessions Trial No. 117/2021 is hereby suspended till disposal of the appeal.

c] The appellant shall be released on bail on executing P.R. Bond of Rs. 25,000/- with one surety of like amount.

d] The appellant shall attend the Court of Additional Sessions Judge, Chandrapur on 1st of every month and the concerned Court shall record his presence till disposal of the appeal.

11. The criminal application (APPA) No. 1053/2024 is **disposed of.**

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1. The appeal is already admitted. The record and proceedings is already received

2. The appeal be listed for final disposal after preparation of paper-book.

[URMILA JOSHI-PHALKE, J.]

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