



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

**CRIMINAL APPLICATION NO.1093 OF 2024 IN
CRIMINAL APPEAL NO.642 OF 2024**

(Nikhil Rajesh Dakaha 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. J.M. Gandhi, Advocate for the appellant.
Mr. V.A. Thakare, APP for the State.
Mr. A.G. Hunge, Advocate for the informant.

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

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

2. The appellant was prosecuted of the offence punishable under Sections 376(2)(j) and (n) of the Indian Penal Code read and Section 5(1) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012. The Special Judge has held the present appellant guilty of the offence punishable under Section 376(2)(j) of IPC and Section 6 of the POCSO and sentenced to suffer rigorous imprisonment for 22 years and to pay fine of Rs.50,000/- in default further rigorous imprisonment of one year.

3. Learned Counsel for the appellant invited my attention towards the deposition of the victim as well as the history narrated by her to the Medical Officer and submitted that though her evidence as well as history narrated by her before the Medical Officer shows that she was having love affair with the present appellant and out of love affair the physical relationship was developed

between them. But this aspect is not considered by the learned trial Court while convicting the appellant and maximum punishment is imposed. From the impugned judgment and from the evidence of the victim and the Medical Officer, he pointed out that he has many arguable points in the present appeal. He submitted that the appeal would take its own time for its final disposal. In the meantime, if the sentence is executed the appeal would become infructuous. In view of that, he prays for suspension of sentence and releasing the appellant on bail.

4. Learned Additional Public Prosecutor strongly opposed the application and submitted that the victim was only 15 years of age at the relevant time, her consent is not relevant. Moreover, her evidence shows that the present appellant has threatened her and by threatening her, he subjected her for the forceful sexual assault. Considering the nature of the evidence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties and perused the deposition of the victim as well as the Medical Officer from which it reveals that there was a love affair between the present appellant and the victim. Out of love affair, the physical relationship was developed between them.

6. Learned Counsel for the appellant has pointed out that at this stage, though re-appreciation of the evidence is not permissible but what the Court has to see is that whether the appellant has every chance of success

in the appeal and the evidence of the victim itself shows that out of love affair two teenagers come together and physical relationship was developed between them. Thus, it is not a case wherein out of lust the present appellant has subjected her for the sexual assault. Considering all these aspects, the suspension of sentence application be allowed.

7. On perusal of the deposition of the victim and the history narrated by her before the Medical Officer pertinently shows that she got acquaintance with the present appellant. Out of the acquaintance, the friendship was developed between them which turned into the love affair and physical relationship was developed out of love relationship. Thus, it is apparent that the appellant who is also young boy and the victim who is below 18 years of age but on the verge of attaining the age of majority. The love relationship was developed between them and which resulted into the physical relationship. Admittedly, at this stage, re-appreciation of the evidence is not permissible but what is to be seen is that whether the appellant has any fair chance of acquittal. This aspect is also 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*** wherein the Hon'ble Apex Court has observed as under:

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 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 shows the circumstance under which the alleged incident has taken place. Admittedly, the appeal would take its own time for its final disposal. In the meanwhile, if sentence is executed admittedly, the appeal would become infructuous. 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 06/08/2024 passed by the Additional Sessions Judge-7 and Special Judge under POCSO Act, Nagpur in Special POCSO Case No.315/2019 is hereby suspended till final disposal of the appeal.

(iii) The appellant - Nikhil Rajesh Dakaha be released on bail on executing P.R. 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 Special Judge and Additional Sessions Judge-12, Nagpur once in a month i.e. on 5th day of every month, till disposal of the appeal.

9. The application stands disposed of.

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Heard.

2. Appeal is already admitted and R. & P is already received.

3. Place the appeal before the Court after preparation of the paper book, for final disposal.

(URMILA JOSHI-PHALKE, J.)