



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

CRIMINAL APPLICATION (APPA) NO.1193 OF 2024
IN
CRIMINAL APPEAL NO.704 OF 2024

Ravi s/o Radheshyam Kawre

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Hudkeshwar, Nagpur

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

Court's or Judge's orders

Mr. K. G. Rathi, Counsel or the applicant/appellant.

Mr. M. J. Khan, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/01/2025

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

2. The appellant was prosecuted for the offence punishable under Sections 363, 366, 376(2) (n) of the Indian Penal Code (for short 'the IPC') and under Section 3, 4 and 5(1) read with Section 6 of the Protection of Children from Sexual Offences Act (for short 'the POCSO Act').

3. As per the prosecution case, the victim girl aged about 16 years has left the house on the day of incident and did not return back, therefore, she was searched and she was found along with the present appellant. There was a physical relationship between

them. On the basis of the said statement, the crime was registered.

4. After appreciation of the evidence, the learned Special Court held the present appellant guilty for the offence punishable under Section 5(1) read with Section 6 of POCSO Act and sentenced to suffer rigorous imprisonment for 20 years and to pay fine of Rs.5000/-, in default of fine rigorous imprisonment for two months. He is further convicted for the offence punishable under Sections 363, 366 and 376(2)(n) of the IPC and under Section 3 and 4 of the POCSO Act, but no separate sentence is awarded.

5. Heard learned Counsel for the appellant who submitted that the admission given by the victim shows that there was a love affair between the victim and the present appellant. Out of a love affair, she joined the company of the appellant and there was a physical relationship due to the love affair. As far as the quantum of the punishment is concerned, he submitted that a harsh punishment is imposed by the learned Special Court without considering these aspects. He has also pointed out that he has many arguable points in the present appeal however, the appeal would take its own time for its final disposal and therefore, the execution of the sentence be suspended and the appellant be released on bail.

6. Learned APP strongly opposed the said application on the ground that the consent of the victim is not relevant, if she is below 18 years of age. As far as the allegation against the present appellant is concerned, which was in the nature of aggravated sexual assault, and therefore, the application deserves to be rejected.

7. After hearing both the sides and on perusal of the evidence it reveals that the victim has admitted that she was having love affair with the present appellant. As far as the physical relationship is concerned, she stated that she was subjected for the sexual assault. The appellant has already pointed out that he has many arguable points in the present appeal. However, the appeal would take its own time for its final disposal and in the meanwhile if the sentence is executed the purpose of preferring the appeal would frustrate. 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 imposed in Special (POCSO) Case No.167/2021 is hereby suspended till disposal of the appeal.
- (iii) The appellant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

The application is disposed of.

CRIMINAL APPEAL NO.704 OF 2024

1. Appeal is already admitted.
2. Record and proceeding is received.
3. Appeal be listed before this Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)