



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

CRIMINAL APPLICATION (APPA) NO. 1194 OF 2024 IN
CRIMINAL APPEAL NO. 705 OF 2024

Kishor Bapuraoji Meshram 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. R.D. Hajare, counsel for applicant/appellant.
Mrs. M.A. Barbde, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/01/2025.

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

2. The appellant was prosecuted for the offence punishable under Section 376 of the Indian Penal Code. The crime was registered on the basis of a report, wherein it is alleged that on 06/08/2021, one deaf and dumb victim was admitted in the hospital along with her mother, as the victim did not get her menstrual cycle, and therefore, she was examined, and it revealed that she is pregnant for seven months. Therefore, the statement of the victim was recorded with the help of the expert, and it revealed that the present appellant has subjected for sexual assault, which resulted into her pregnancy. On the basis of the said report, police have registered the crime against the present appellant. During the investigation, the victim has delivered a child. The blood samples of the child as well as the present

appellant and the victim were sent for the DNA examination. During the DNA examination, it was revealed that the present appellant and the victim are concluded to be the biological parents of the child delivered by the victim. After completion of the investigation, the charge-sheet was filed against the accused.

3. The Sessions Court, after appreciating the evidence, convicted the accused and sentenced him to suffer rigorous imprisonment for 10 years and fine of Rs. 10,000/-.

4. Being aggrieved and dissatisfied with the same, the present appeal is preferred.

5. Heard learned counsel, Mr. R.D. Hajare, for the appellant, who submitted that it was a consensual act between the victim and the present appellant and subsequently, the false FIR is lodged against the present appellant. The present appellant has every chance of success in the present appeal. In view of that, 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 consent of a deaf and dumb girl is not relevant. Moreover, her evidence nowhere reveals that she was a consenting party. She submitted that, at this stage, the evidence is not re-appreciated, but the appeal is devoid of merits, and therefore, the application deserves to be rejected.

7. After hearing both sides and on perusal of the impugned judgment as well as the evidence of the victim, admittedly it nowhere reveals that the victim was a consenting party. The DNA report and the evidence of the victim show the involvement of the present appellant. Admittedly, at this stage, the court is not expected to reappreciate the evidence. At this stage, the only thing it is to be seen whether the appellant has pointed out that he has any fair chance of acquittal, and if he succeeds to show the same then the execution of sentence can be suspended.

8. This aspect is considered by 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*, wherein, by referring to the catena of decisions, the Hon'ble Apex Court observed that bearing in mind the aforesaid principles of law, the endeavor 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 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.

9. In the case in hand, after considering the evidence of the victim and the impugned judgment, at this stage, nothing is on record to show that it was a consensual act. Considering the deaf and dumb girl subjected for sexual assault by the present appellant, and no grounds are made out to suspend the sentence, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

a] The criminal application (APPA) No. 1194/2024 is **rejected**.

CRIMINAL APPEAL NO. 705 OF 2024

1. Appeal is already admitted. Record and Proceedings is already received.
2. Appeal be listed for final disposal after preparation of paper-book.

[URMILA JOSHI-PHALKE, J.]