



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

CRIMINAL APPLICATION (APPA) NO. 1253 OF 2024
IN
CRIMINAL APPEAL NO. 749 OF 2024

Anil Nanaji Ijgamkar and another Vs State Of Maharashtra and another.

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

Court's or Judge's Order

Mr. VN. Morande, counsel for applicants/appellants.

Mr. VA.Thakre, APP for non-applicant/State.

Mrs. Anuprita Mishrikotkar, counsel (appointed) for non-applicant No.2.

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

1. By this application, the appellants are seeking suspension of sentence and releasing the appellants on bail.
2. The appellants were prosecuted for the offences punishable under Sections 302, 376(2), and 315, read with Section 34 of the Indian Penal Code, 1860; Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), & 3(1) (w) (II) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.
3. After appreciating the evidence, the learned Sessions Judge convicted the appellant No. 1 of the offence punishable under Section 315 and sentenced him to suffer rigorous imprisonment for seven years and fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months. The appellant No. 2 is convicted for the offence

punishable under Section 315 of the Indian Penal Code, and she is sentenced to suffer rigorous imprisonment for four years and fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months. The amount of fine is already paid.

4. Heard learned counsel for the appellants, who pointed out from the impugned judgment as well as the evidence on record shows that the First Information Report is lodged after three months of the incident. The entire prosecution case is rested upon the dying declaration. From the dying declaration, he has pointed out the discrepancies in the dying declaration and submitted that the appellants have many arguable points in the present appeal, but the appeal would take its own time for its final disposal. The punishment imposed is of a limited period. Considering all these aspects, the sentence be suspended and the appellants be released on bail.

5. The learned APP and learned counsel for the victim strongly opposed the said application on the ground that the appeal itself is devoid of merits. The learned APP submitted that the evidence of the PW.1 i.e. mother of the victim, shows the involvement of the present appellants in the alleged offence. Considering the fact that minor victim was subjected for forceful sexual assault, and thereafter caused the miscarriage, and death of the victim is also caused. Thus, there is a sufficient material on record to show that

appellants are guilty, and therefore impugned judgment cannot be faulted with.

6. After hearing both sides and on perusal of the evidence on record, it reveals that learned counsel for the appellants has pointed out that he has many arguable points in the present appeal. However, the appeal would take its own time for its final disposal. Moreover, punishment imposed is of a limited period. Considering all these aspects, admittedly, at this stage, re-appreciation of the evidence is not permissible, but considering the limited period punishment and the appellants have many arguable points in the present appeal. Hence, 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 Special Case No. 27/2023 is hereby suspended till disposal of the appeal.
- c] The appellants shall be released on bail on executing PR. Bond of Rs. 25,000/- each with one solvent surety of the like amount.

7. The criminal application (APPA) No. 1253/2024 is **disposed of**.

CRIMINAL APPEAL NO. 749/2024

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.]