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20.appa.733.2024

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

CRIMINAL APPLICATION (APPA) NO.733 OF 2024
IN
CRIMINAL APPEAL NO.347 OF 2024

Vitthal Ramaji Kamathe

Vs.

State of Maharashtra, through Police Station Tiosa, District Amravati

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

Court's or Judge's orders

Mr. P. K. Dahat, appointed Counsel for the appellant.
Mr. C. A. Lokhande, APP for the respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/02/2025

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 Section 376(3) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act and under Section 3(1)(w)(i)(ii) and 3(2)(v) and (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
3. The crime is registered on the basis of report lodged by the mother of the victim on an allegation that victim aged about 12 years was studying in the 7th standard and was subjected for the sexual assault by the present appellant, who is

the friend of her husband. On the basis of the said report, police have registered the crime against the present appellant.

4. During the trial, the prosecution has examined five witnesses including the victim. On the basis of the evidence of the victim and the medical evidence, the appellant is convicted for the offence punishable under Section 376(3) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 20 years and pay fine of Rs.10,000/-, in default of payment of fine, rigorous imprisonment for six months. He further convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for 20 years and fine of Rs.10,000/-, in default of payment of fine, rigorous imprisonment for six months.

5. Heard learned Counsel for the appellant who submitted that as far as the evidence of the victim and other witnesses are concerned suffering from infirmities and there is variance in the evidence as well as the statement which is recorded by the investigating agency. He submitted that the fact of sexual assault is not corroborated by the medical evidence also. He invited my attention towards the cross-examination and submitted that though the mother of the victim has seen the victim proceeding along with one Meshram, however, said Meshram is

not added as an accused. Thus, the appellant has many arguable points in the present appeal. The appeal would take its own time for its final disposal. In the meanwhile, if the sentence is executed the appeal would become infructuous.

6. Learned APP strongly opposed the said application on the ground that 12 years girl is subjected for the sexual assault by the appellant, who is of her father's age. As far as the story of the love affair is concerned, which is not acceptable. The evidence of the victim is corroborated by the medical evidence also which shows that there was a hymenal tear found during the examination of the victim by the Medical Officer. He submitted that considering the gravity of the offence that the appellant has subjected a teenage girl for the forceful sexual assault, at this stage, there is no ground to suspend the suspend, and therefore, the application deserves to be rejected.

7. After hearing the learned Counsel for the appellant and learned APP for the State, perused the impugned judgment as well as the evidence on record. From the evidence on record, it reveals that the appellant is aged about 37 years old whereas the victim is only 12 years of age, therefore, the story of the love affair between them is not acceptable. As far as the evidence of the victim is concerned, she specifically stated that she was taken by the

appellant and the other person on the pretext of taking her outside the house and thereafter, took her in the forest and subjected her for forceful sexual assault. At this stage, nothing is on record to disbelieve the version of the victim. As far as the law regarding suspension of sentence is concerned which is well settled, at this reappreciation of evidence is not permissible. What is to be looked into whether the appellant is succeeded in showing that he has every chance of success in the present appeal. This aspect is dealt by the Hon'ble Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** wherein the Hon'ble Apex Court after referring the catena of decisions in para No.33 observed as follows:

"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, 12 years girl is subjected for the forceful sexual assault by the person who is a friend of her father, therefore, the story narrated by the learned Counsel for the appellant that there was a love affair is not acceptable. Considering the evidence of the victim this is not a fit case wherein the discretion can be used for suspension of the sentence and therefore, the application deserves to be rejected. Accordingly, the application deserves to be rejected.

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1. Record and proceeding is already called and received.
2. Appeal be listed for final disposal after preparation of the paper book.

3. Considering the appellant is behind bars since 2021, the Registry to expedite the preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)