



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

CRIMINAL APPLICATION (APPA) NO. 371 OF 2025
IN
CRIMINAL APPEAL NO. 202 OF 2025

(Ronaldo @ Max Jermiyas Enmonuel & Anr.

Vs.

State of Maharashtra, Thr. Police Station Officer, Nagpur Imamwada Police
Station, Nagpur)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. H.D. Dangre, Advocate a/w Mr. M.V. Rai, Advocate for the
Applicants/Appellants.

Mr. C.A. Lokhande, APP for the Non-applicant-Respondent No.1/State.

Mr. A.J. Dhoble, Advocate for the Non-applicant-Respondent No.2/Victim.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 10th JUNE, 2025

1. Heard.

2. By this Application, the Appellants seeking suspension of sentence and releasing them on bail during the pendency of the Appeal.

3. The Appellants who are the original Accused Nos. 1 and 2 are convicted for an offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced them to suffer Rigorous Imprisonment for 20 years each and to pay fine of Rs.10,000/- each, in default to suffer Rigorous Imprisonment for 1 year each. The Accused Nos. 1 to 3 are further convicted

for an offence punishable under Section 392 read with Section 34 of the Indian Penal Code and sentenced them to suffer Rigorous Imprisonment for 5 years each and to pay fine of Rs.5,000/- each, in default to suffer Rigorous Imprisonment for 6 months each. They are further convicted for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code and are sentenced to suffer Rigorous Imprisonment for 1 year each and to pay fine of Rs.2,000/- each, in default to suffer Rigorous Imprisonment for 1 month each.

4. Being aggrieved and dissatisfied with the same, the Appeal is preferred by the present Appellants on the ground that, the learned Trial Court convicted the Appellants without appreciating the evidence in a proper perspective. It is submitted by the learned Counsel for the Appellants that, neither the Victim nor the other prosecution witnesses have supported the prosecution's case, as far as the allegations in respect of the sexual assault is concerned. He further invited my attention towards the evidence of the Victim as well as his cross-examination and submitted that, though the Appellants were identified during the identification parade, which is not the substantial evidence but the substantial evidence is their identification before the Court, which is not done during the trial. He further invites my attention towards the admissions given during the cross-examination and submitted that, the Appellants have many arguable points in the present Appeal, but the Appeal will take its own time for its final decision. In the meantime, if the sentence is executed then the Appeal would become infructuous. Thus, considering the same, the

execution of the sentence be suspended and the Appellants be released on bail.

5. The learned APP for the Respondent No.1/State and learned Counsel for the Respondent No.2/Victim, strongly opposed for the same and submitted that, a reasoned judgment is passed by the learned Trial Court. In support of the same, the evidence of the Victim and other witnesses were also examined by the prosecution. At this stage, re-appreciation of the evidence is not permissible, and therefore, the Application for suspension of sentence deserves to be rejected.

6. After hearing both the parties and on perusal of the judgment, it reveals that, in all five witnesses were examined by the prosecution to support the prosecution's case. Both Victim and his friend deposed about extortion of money from them but he only stated that two unknown persons subjected him for oral sex and thereby he was subjected for the sexual harassment at the hands of the said persons. As far as the present Appellants are concerned, neither they are identified before the Court nor their description was mentioned by these witnesses. The medical evidence is also not supporting the prosecution's case. The admissions given by the Victim during the cross-examination sufficiently shows that the Appellants are having many arguable points in the present Appeal. Admittedly, the Appeal would not be decided in near future. In view of that, the Application of the present Appellants deserves to be considered as far as the suspension of the sentence is

concerned.

7. The guidelines issued by the Hon'ble Apex Court as far as the application of the suspension of sentence is concerned, in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr., in Criminal Appeal Nos.1331-1332/2023*** and held 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 view of the above observation of the Hon'ble Apex Court, if the facts and the evidence in the present case is taken into consideration, admittedly re-appreciation of the evidence is not permissible but what is to be seen that whether the Appellants have any chance of success in the present Appeal, the learned Counsel for the Appellants,

succeeded in showing the same. The fine amount is already deposited. In view of that, the Application deserves to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

- i.** Criminal Application (APPA) No. 371/2025, is hereby **allowed**.
- ii.** The execution of the sentence passed in Spl. Cri. (Child) Case No. 290/2021, is hereby suspended till the disposal of the Appeal.
- iii.** The Appellant No.1 – Ronaldo @ Max Jermiyas Enmonuel and Appellant No.2 - Aniket Kailas Wasnik, shall be released on bail on executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) each, with one solvent surety in the like amount.
- iv.** The Appellants shall attend the Special Court on 5th of every month i.e. in the Court of Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court) Nagpur, till the disposal of the Appeal.
- v.** The Appellants shall further furnish their local addresses alongwith the address proof before the Special Court.

CRIMINAL APPEAL NO. 202 OF 2025

1. Appeal is already admitted.
2. R & P is already received.
3. Appeal be listed before this Court after preparation of the Paper Book.

(URMILA JOSHI-PHALKE, J.)