



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

CRIMINAL APPLICATION NO.1026 OF 2025(APPA)
IN
CRIMINAL APPEAL NO. 379 OF 2025

Bhaskar Vishavanath Nanhe Vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms.Sonali Khobragade, Advocate for the applicant/appellant.
Mr. Nikhil Joshi, APP for the State.

CORAM : NEERAJ P. DHOTE, J.

DATE : 05/01/2026

- 1) This is an application for suspension of a sentence imposed by the learned Additional Sessions Judge, Chandrapur in Sessions Case No.38 of 2018 by an judgment and order dated 09/12/2022 convicting the applicant/appellant for the offence punishable under Section 376(2)(1) of Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/-, in default of payment of fine to suffer simple imprisonment of one month.
- 2) Heard the learned Advocate for the applicant/appellant and the learned APP for the State. They took me through the relevant evidence.

3) It is the case of the prosecution that the informant's daughter aged 20 years, who was deaf and dumb was raped by the applicant/appellant on 25/12/2017, when the victim had gone to throw the garbage. The victim's mother saw the applicant/appellant and the victim together and the applicant/appellant ran away. The incident was reported to the concerned police Station and crime bearing No.475 of 2017 was registered against the applicant/appellant for the offence punishable under Section 376(2)(1) of the Indian Penal Code. After the investigation the applicant/appellant was chargesheeted and after full fledged trial, he came to be convicted as above.

4) According to the learned Advocate for the applicant/appellant, there was love affair between the victim and applicant/appellant and when the victim's mother saw them together, she lodged the report of rape against the applicant/appellant. She submits that the medical evidence do not support the case of the prosecution in respect of rape. She further submits that, at the relevant time, the minimum punishment provided for the said offence was for Seven (7) years imprisonment and the learned trial court considered the amended sentence of ten (10) years imprisonment and awarded ten (10) years imprisonment. She submits that during the trial, the applicant/appellant was on bail and he

has put in three and half years of imprisonment till date. She submits that the application be allowed.

5) The learned APP for the State submits that, the victim's testimony establishes the charge of rape. The victim's mother supports the victim's testimony. Nothing is brought in the cross-examination so as to discard the case of prosecution. He further submits that, though the minimum sentence for the offence at the relevant time was of seven(7) years, the maximum punishment was of imprisonment for life. He submits that, considering the evidence on record, the application be rejected.

6) The victim who is examined as PW-2, in her testimony deposed that, on the relevant day, when she went for throwing garbage after sweeping the courtyard, the applicant/appellant dragged her in the field by pressing her mouth and committed forceful intercourse with her. She further deposed that, the applicant/appellant beat her by stick and slapped and her mother, two brothers and other people reached on the spot. However, she admitted in the cross examination that she did not suffer injury on back due to stick. Further, her testimony that applicant pressed her mouth, pulled her down, kissed on lips, beat her with stick and slapped were the omissions.

7) The testimony of the victim's mother, who is examined as PW-4 show that on 25/12/2017, when she returned home in the evening and did not find the victim at

home, she searched for her and the victim was found with the applicant/appellant near the heap of straw and victim was not having clothes on her body and applicant/appellant had removed his full pant. Her testimony show that, the applicant/appellant ran away from there after seeing them. The testimony of the victim's mother nowhere show that the victim was struggling or opposing the act of sexual intercourse. The cross-examination of the victim's mother who is also the first informant, indicate that, there was love affair between the victim and the applicant/appellant. There is no dispute that, at the relevant time, the victim was major by age.

8) The evidence of the Medical Officer i.e. PW-6 show that there was no external injury, though her hymen was torn and was found ruptured. This indicate that the testimony of the victim in respect of assault by the applicant/appellant with stick is not corroborated by the medical evidence. The cross-examination of the Medical Officer indicate that, as the bleeding or edema was not present at the time of examination of victim and it can be said that, intercourse did not occur within 24 hours. This *prima facie* indicate that, the medical evidence do not corroborate the victims testimony in respect of forceful intercourse.

9) In view of above observations, the applicant/appellant, is having good case on merits. The

learned Trial Court, as can be seen from the observations in Paragraph No.29 of the impugned judgment show that it considered awarding the minimum sentence of ten(10) years and fine. The learned Advocate for the applicant/appellant rightly pointed that the minimum sentence of imprisonment of ten(10) years was brought in the statute on 21st April 2018 and at the relevant time i.e. at the time of incident which occurred in December 2017, the minimum punishment was for seven(7) years imprisonment. The applicant/appellant has already put in three and half years (3 ½) of imprisonment. He was on bail during the trial. The appeal is of the year 2025, and not likely to be finally heard in the near future. Hence, I proceed to pass the following order.

ORDER

- (i) The application is allowed.
- (ii) The sentence imposed by the learned Additional Sessions Judge, Chandrapur in Sessions Case No.38 of 2018 by an judgment and order dated 09/12/2022 convicting the applicant/appellant for the offence punishable under Section 376(2)(1) of Indian Penal Code is hereby suspended till the final disposal of the Criminal Appeal.
- (iii) The applicant/appellant be released on PR. Bond of Rs.15,000/- (Rupees fifteen thousand only), with one surety in the like amount.
- (iv) Bail before the trial Court.

(v) The applicant/appellant shall cooperate in the early hearing of the Criminal Appeal.

(vi) The application stands **disposed of**.

JUDGE