

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

CRIMINAL APPLICATION (APPA) NO.342 OF 2024
IN
CRIMINAL APPEAL NO.185 OF 2024

Ramzan Kale Parsuwale

Vs.

The State of Maharashtra through Police Station Officer, Police Station,
Mangrulpir, District Washim

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

Court's or Judge's orders

Mr. N. A. Lapalikal, Counsel for the applicant.
Ms. S. V. Kolhe, APP for respondent / State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/01/2025

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

2. The applicant is prosecuted for the offences punishable under Section 376 of the Indian Penal Code and Sections 3(2)(v), 3(2)(w) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 92(2) of the Rights of Persons with Disabilities Act.

3. The allegation against the present accused/applicant that he has committed forcible sexual intercourse with the deaf, dumb and mentally retarded victim belonging to the Scheduled Caste. As per the allegation, on 24.09.2022 informant who is

the mother of the victim lodged report at Mangrulpir Police Station contending that she belongs to the Scheduled Caste. Accused is (Muslim) Gavali by caste and victim aged about 25 years is deaf, dumb and mentally retarded. On 24.09.2022 at about 5.00 p.m. she closed the door of the house from outer side and went in the village to beg for bread. The victim was sitting in the courtyard. When she returned to the house at about 6.00 p.m., she did not witness the victim in the courtyard. She found that door of the house is closed from inner side. She knocked the door. The person in the house abused her in Hindi language and also slapped her. Accused opened the door. She entered in the house and witnessed that the pant of the accused was lying on the ground whereas the clothes of the victim were also scattered. On inquiry with the victim, victim has narrated the incident, therefore, she approached the Police Station. The victim was referred for the medical examination. After completion of the investigation, the charge-sheet was submitted and the case was committed to the Court of Sessions.

4. In support of the prosecution case, the prosecution has examined as many as eight witnesses. The material reliance of the prosecution is on the evidence of the PW-1 mother of the victim and the medical evidence. As far as the evidence of the victim is concerned, which could not be recorded as she was unable to depose as she suffering from deaf

and dumb. On the basis of the evidence, the accused is convicted and sentenced to suffer rigorous imprisonment for fourteen years and to pay fine of Rs.15,000/-. Out of the fine amount, the Court has directed to pay the amount of Rs.10,000/- to the victim as compensation.

5. Being aggrieved and dissatisfied to the same, the present appeal is preferred. Heard learned Counsel for the applicant who invited my attention towards the medical evidence and submitted that there may be several reasons for the rupture of the hymen. The applicant has many arguable points in the present appeal, but the appeal would take its own time for its final disposal and in the meanwhile, if the sentence is executed, the preference of the appeal would become infructuous. He further pointed out from the impugned judgment, the observation of the Court and submitted that the reliance of the Court on the evidence of the mother of the victim itself is erroneous and it is not corroborated by any of the evidence and therefore, the applicant is having every chance of success in the present appeal, in view of that, he prayed for suspension of the sentence.

6. Learned APP strongly opposed the said application on the ground that the evidence on record sufficiently shows the involvement of the present applicant in the alleged offence, at the stage of suspension of sentence evidence is not to be

appreciated. She submitted that the medical evidence and the evidence of the PW-1 sufficiently show that the present applicant was seen along with the victim in an undress condition at the spot of incident. The victim was immediately referred to the medical examination. The medical evidence shows that there was rupture of the hymen as well as the Medical Officer has witnessed minimal bleeding at the time of examination of the victim. There was rupture of the hymen. Merely because there was no external injury is not sufficient to assume that there was no such incident took place. At this stage, whether there is sufficient ground to suspend the sentence is required to be looked into. In view of that, the application deserves to be rejected.

7. After hearing both the sides and on perusal of the evidence on record it reveals that the accused/applicant has faced the prosecution for the offence punishable under Section 376 of the Indian Penal Code alleging that the deaf and dumb girl is subjected for the sexual assault by the present applicant. The entire reliance of the prosecution is on evidence of the mother of the victim, who is examined as PW-1. She has narrated about the incident that when she entered in the house, she had seen the accused who was not wearing his pant and the clothes of the victim were also not on her person. The victim has narrated the incident to the mother

and thereafter she lodged the report. Immediately, the victim was referred for the medical examination.

8. The evidence of PW-4 Dr. Rucha Sudhakar Ghunage also shows that on her examination she has seen that the hymen is rupture and there was minimal bleeding due to the rupture of hymen. The other witnesses are also examined to corroborate the case of the prosecution. PW-2 Ramesh Shrungare acted as a panch in whose presence the samples were also seized. PW-3 is the victim's aunt to whom the incident was narrated by the PW-1. PW-4 is the Medical Officer. Medical certificate is also on record which is at Exhs.32 and 33 which shows the rupture of the hymen. Admittedly, no external injuries are found on the person of the victim. PW-5 was the victim an attempt was made to record her evidence as she is a deaf and dumb girl. Her evidence could not be recorded. PW-6 Lata Bhimrao Dhavak is the Headmistress, PWs-7 and 8 are the Investigating Officer. On the basis of the said evidence, the Sessions Court come to the conclusion that the victim is fully grownup girl, she is aged about 25 years and deaf, dumb and also mentally retarded. It is observed that a girl who is already deaf, dumb and mentally retarded it is not expected from her that she will resist to the act of the accused because she does not understand what is happening with her. In such circumstances, even her consent cannot be taken into consideration even if it is there. It is further

observed that in such circumstances absence of injury on the body of the victim or to her vagina will not be sufficient to discard the cogent and consistent evidence. Thus, reasoned Judgment is passed by the learned Sessions Court while convicting the accused.

9. By this application, the applicant is seeking suspension of sentence. From perusal of Section 389 of the CrPC, it is evident that the matter falling under the category of Sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage. 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** dealt with the aspect of suspension of sentence by referring the catena of decisions and held that "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.

10. In the case in hand, the impugned Judgment of the learned Sessions Court shows that the reasons are assigned by the learned Sessions Court while convicting the accused/applicant. At this stage, no case is made out for suspending the sentence, in view of that the application deserves to be rejected. Accordingly, the application is rejected and disposed of.

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1. The record and proceeding is already received.
2. Office to prepare the paper book. After preparation of the paper book, the appeal be listed for the final disposal.

(URMILA JOSHI-PHALKE, J.)