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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 629/2016**

NISHA

..... Appellant

Through Counsel (appearance not given)

versus

STATE (N.C.T OF DELHI)

..... Respondent

Through Ms. Kusum Dhalla, APP.
SI Narasi Prasad Meena, P. S. New
Friends Colony.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.10.2019

1. The appellant has filed the above captioned appeal against the judgment dated 25.02.2016 and the order on sentence dated 02.03.2016 passed by the Learned Sessions Judge, Saket Courts, Delhi, whereby the appellant was convicted of the offence under Sections 366/34 of the IPC and Sections 368/34 of the IPC. The appellant was sentenced to Rigorous Imprisonment for five years and a fine of ₹10,000 under Section 366/34 of the Indian Penal Code, 1860 (IPC) and Rigorous Imprisonment of three years and a fine of ₹3,000 under Sections 368/34 of the IPC.
2. The learned counsel appearing for the appellant states that during the pendency of the trial, the Trial Court did not take any steps to ascertain the age of the appellant. He placed reliance on the order framing charge dated 19.07.2011, to substantiate the same.
3. During the appellant's incarceration in jail, a visiting Judge from the

Delhi Legal Services Authority office visited the jail and enquired about the appellant's age and the facts of the case. On hearing the facts from the appellant, the visiting Judge directed the concerned Investigating Officer (IO) and Jail Superintendent to conduct an ossification test of the appellant. The IO, in compliance with the said direction, moved an application for age determination of the applicant before the Court of ACMM (South East), Saket Courts, Delhi and the same was allowed vide an order dated 02.02.2019.

4. Pursuant to the said order, the ossification test of the appellant was conducted by the Medical Board at Safdarjung Hospital on 06.06.2019 and the report of the test was submitted by the IO before the Trial Court. As per the medical board, the age of the applicant is between twenty-five and thirty years. Learned counsel appearing for the appellant contends that this indicates that the applicant was a juvenile at the time of the incident.

5. The learned counsel for the appellant contends that as per the Juvenile Justice Act, 2000, the maximum punishment that could be imposed on the app was only three years and that the applicant has already undergone a period of imprisonment of three years and four months after conviction.

6. Learned counsel for the appellant further submits that one of the appellant's children is suffering from tuberculosis and is under treatment and there is no one else present in the family to take care of her minor son. He drew the attention of this court to various documents regarding the treatment of her son, which are already on record.

7. The appellant has already served a substantial portion of her sentence. She has undergone actual custody of over three years and five months and

has earned remission of over eight months and one day. She is now required to serve the remaining sentence, which is a little over ten months.

8. Undeniably, the offences for which the appellant is convicted are serious. She has been found guilty of, *inter alia*, forcing the prosecutrix into prostitution. The evidence obtaining in this case indicates the aforesaid. The learned counsel appearing for the appellant fairly states that he does not wish to contest the appeal on merits, but prays that a lenient view be taken and the appellant be released on the sentence already served.

9. The petitioner has two minor children – a daughter and a son. On the date of her conviction, her minor son was only three and a half years old. Admittedly, the appellant is not involved in any other cases and her past antecedents are clean. Her son has been ailing for over two years and the fact that he has been maintaining ill health has been verified. In view of these mitigating circumstances, this Court considers it apposite to reduce the sentence to the sentence already awarded. It is so directed.

10. The petitioner was released on interim bail by virtue of an order dated 06.09.2019, which was subsequently extended by the order dated 15.10.2019.

11. In view of the above, no further orders for the petitioner's release are required to be passed.

12. The appeal and all pending applications are disposed of.

VIBHU BAKHRU, J

OCTOBER 22, 2019/DR