

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

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Reserved on: 16th January, 2023
Pronounced on: 25th January, 2023

+ CRL.M.(BAIL) 1092/2022 in CRL.A. 1325/2019

HONEY

..... Appellant

Through: Ms. Dolly Sharma, Adv.

versus

STATE

..... Respondent

Through: Sh. Ritesh Kumar Bahri, APP for
State with SI Jitender Kumar, PS
Daryaganj.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed seeking regular suspension of sentence awarded to the appellant pursuant to judgment of conviction dated 25th August, 2019 and order on sentence dated 28th September, 2019 by the Ld. ASJ in proceedings related to FIR No.369/2015 registered at PS Daryaganj under Sections 363/366/376(2)(n) IPC and Section 6 of the POCSO Act. As per the order on sentence, the appellant was awarded a sentence of 10 years RI for offence punishable under Section 6 of the POCSO Act and a fine of Rs.5,000/- (SI for 3 months in default of payment of fine) and RI for a period of 3 years for offence punishable under Section 366 IPC and a fine of Rs.2,000/- (SI for 1 month in default of payment of fine), the sentences were to run concurrently.

2. The learned counsel for the appellant submitted that the appellant was granted interim suspension of sentence by this Court *vide* orders

dated 8th July, 2021, 16th October, 2020, 28th May, 2020 and 11th December, 2019 with further extensions from time to time *vide* orders dated 22nd November, 2021, 30th June, 2020, 26th June, 2020 and 12th June, 2020. The appellant has not misused the liberty granted each time and surrendered in time. It was further contended that there were no previous involvements of the appellant and the case by the prosecution is totally false and fabricated.

3. As per the case of the prosecution, Smt. Om Wati (the mother of the victim) alleged that on 01st June, 2015 she alongwith her daughter aged 16 years left her house at about 12:30 p.m., purchased clothes and when they were leaving at about 1:00-1:30 p.m., her daughter was following behind her and in a lapse of concentration when she looked behind her daughter was not there. She could not find her daughter and she stated that she had a doubt that the appellant who was a neighbour may have taken her daughter since she knew that they had a romantic relationship between them for the last 3-4 months. The appellant was apprehended on 09th May, 2019 and her daughter was with him. In her statement, she insisted that she had an affair with the appellant for two years and she had gone to the market with her mother and thereafter the appellant caught hold of her hand and walked away with her. They went to Kashmere Gate Bus Stand and took a bus to Haridwar and stayed in a hotel for about 12 days where the appellant made physical relations with her. The learned counsel for the appellant submitted that the Ld. Trial Court had ignored the material documents of PW-1 i.e. her Aadhar Card and Voter ID which showed her to be a major with year of birth as 1997, and even the MLC mentioned her age as just 18 years. Even PW-1 during her cross-examination accepted that she was one year younger to her sister and that her sister was 19 years at the time of the incident. It

was contended that the Ld. Trial Court had failed to consider the evidence of PW-3, PW-1's mother who accepted that she did not place any document regarding the age of PW-1 at the time of admission of PW-1 in the school, and that's why she had given her imaginary date of birth at the time of admission in the school, the records of which were relied upon by the prosecution. Also the school authorities were not examined to explain contradictions in the school certificate nor bone ossification test was carried out.

4. The appellant has already undergone about 3 years 3 months of the sentence as per the Nominal Roll which also indicates that the jail conduct of the appellant has been satisfactory, there are no previous involvements and interim bail had been granted on various occasions, as noted above.

5. The learned counsel for the appellant also relied upon the various orders of Coordinate Benches of this Court in viz. *Hanzla Iqbal v. State*, (Bail Appln. 1926/2022 dated 24th August, 2022); *Pramod Kumar Chaurasia v. State*, (CRL.A. 584/2020 dated 07th December, 2021); *Praduman v. State*, (Bail Appln. 2380/2021 dated 05th October, 2021) in support of his submissions, where this Court has granted bail in similar situations.

6. In view of these facts and circumstances, this Court is of the considered view that the appellant be granted regular suspension of sentence, particularly since there is a question regarding the age of the prosecutrix, which as per her own testimony seems to place her as a major on the date of the incident as well as the statements of the mother and the prosecutrix that she and the appellant were in a romantic relationship prior to the date of the incident.

7. In view of the directions of the Hon'ble Supreme Court in *Sonadhar v. The State of Chhattisgarh*, SLP (Crl.) 529/2021 *vide* order dated 6th October, 2021, as well as *Saudan Singh v. State of Uttar Pradesh*, 2021 SCC OnLine SC 3259 (where the Hon'ble Supreme Court has stated that in cases other than life sentence cases the broad parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail) this Court deems it fit to suspend the sentence of the appellant.

8. It is, therefore, directed that the sentence of the appellant be suspended pending the hearing of the appeal, on furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court/ CMM/ Duty Magistrate, further subject to the following conditions:

- i. Appellant will not leave the country without prior permission of the Court.
- ii. Appellant shall provide permanent address to the Ld. Trial Court. The appellant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Appellant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Appellant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.

- v. Appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression on merits of the matter.

9. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

10. Accordingly, the application is disposed of. Pending applications (if any) are disposed of as infructuous.

11. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JANUARY 25, 2023/mk