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

+ **CRL.A. 490/2022**

JUNED ALIAS BABLU

..... Appellant

Through: Mr. Ravin Rao, Advocate.

versus

STATE

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with W/PSI Ritu, PS: Shalimar Bagh.

Ms. Sakshi, Advocate for guardian of victim.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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04.04.2024

CRL.M. (BAIL) 1437/2023 (for suspension of sentence)

1. This application has been filed by the Appellant namely Juned @ Bablu S/o Sh. Suleman Khan, seeking suspension of sentence during the pendency of the appeal in case FIR No.569/2016 dated 06.09.2016 under Section 354A IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') registered at PS: Shalimar Bagh. Charge Sheet was filed Section 354A IPC and Section 10 of POCSO Act. Charges were framed under Section 506 IPC and Section 10 of the POCSO Act. By judgment dated 28.03.2022 passed by learned Additional Sessions Judge (North-West)-01, Special Court, POCSO, Rohini District Courts, Delhi, in Sessions Case No.53610/2016, appellant was convicted for offence under Section 10 of the POCSO Act and by order on sentence dated 03.06.2022, he was sentenced to undergo rigorous imprisonment for a period of 05 years with fine of Rs.5,000/- and in default of payment of fine, further simple imprisonment for a period of 03 months.



2. Learned counsel for the appellant submits that the appellant has already undergone more than 50% of the sentence awarded and therefore, the sentence be suspended and he be released on bail in terms of the orders of the Supreme Court in *Sonadhar v. The State of Chhattisgarh, 2021 SCC OnLine SC 3182* and *Saudan Singh v. State of Uttar Pradesh, 2021 SCC OnLine SC 3259*, wherein the Supreme Court has observed that in cases other than the ones concerning life sentences, broad parameter of 50% of actual sentence undergone can be the basis of granting bail to a convict. It is also stated that appellant has no previous involvements of the appellant and his jail conduct has been 'satisfactory'.

3. Learned counsel further submits that the Trial Court has not appreciated that there are several contradictions in the testimonies of the witnesses including the fact that there was a delay of 04 days in making the complaint.

4. Learned counsel appearing on behalf of the guardian of the victim candidly states that she has no objection to the suspension of sentence in view of the orders of the Supreme Court in *Sonadhar (supra)* as well as *Saudan Singh (supra)*.

5. Learned APP for the State, *per contra*, submits that the allegations are grave and the prosecutrix was only 05 years of age on the date of incident and her testimony corroborates the allegations. The evidence given by her is of a sterling quality and can be relied upon even without corroboration. It is further submitted that the prosecutrix and appellant are both residents of the same locality i.e. Shalimar Bagh and therefore, if the Court is inclined to suspend the sentence, stringent condition may be imposed that the appellant shall not contact the prosecutrix in any manner or go near her residence.



6. Heard learned counsel for the appellant, learned counsel for the guardian of the prosecutrix and learned APP for the State.

7. Nominal roll reflects that appellant has undergone more than 50% of the sentence awarded. He has been working as a 'Lungar/kitchen sahayak' and his jail conduct is 'satisfactory'. There is no other involvement and the antecedents are clean.

8. Considering that the appellant has undergone more than half of the sentence awarded and hearing of the appeal is likely to take time, this Court is inclined to suspend the sentence of the appellant in view of the judgments of the Supreme Court in *Sonadhar (supra)* and *Saudan Singh (supra)*. In *Bhagwan Rama Shinde Gosai and Others v. State of Gujarat, (1999) 4 SCC 421*, the Supreme Court has held that in cases where expeditious hearing of appeals cannot be effectuated, the Appellate Court should concern itself in considering suspension of sentence applications.

9. In view of the facts and circumstances mentioned above, sentence of the appellant is suspended pending the hearing of the appeal and he is directed to be released on bail, subject to the Appellant furnishing a personal bond in the sum of Rs.30,000/- with two sureties of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:

- (i) Appellant will not leave the country without prior permission of this Court;
- (ii) He shall not indulge in any criminal activity or communicate with or contact the Complainant in any manner whatsoever and go anywhere near or in the vicinity of the residence of the prosecutrix;



- (iii) He shall provide his permanent residential address to the concerned IO and shall intimate the IO as well as this Court by filing an affidavit regarding any change in the residential address;
 - (iv) He shall provide his mobile number to the IO concerned which shall be kept in working condition at all times and any change in the mobile number will only be after prior intimation to the IO; and
 - (v) He shall appear before this Court, as and when, the appeal is taken up for hearing.
10. Nothing stated in this order will be a reflection of an opinion on merits of the case.
11. Application stands disposed of.
12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 04, 2024/shivam