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

+ CRL.A. 414/2017
RAM BAHADUR

..... Appellant

Through: Mr. Biswajit Kumar Patra, Mr. Vaibhav Jain, Mr. Kaustub Shrivastava, Mr. Meesam and Mr. Prakash Singh Rana, Advocates for Appellant with Appellant (through Video Conferencing)

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Renu Hooda, PS: Najafgarh. Ms. Sunita Arora, Advocate for Complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **12.02.2024**

CRL.A. 414/2017 & CRL.M.(BAIL) 799/2019 & CRL.M.(BAIL) 1661/2023 & CRL.M.A. 4085/2021

1. CRL.M.(BAIL) 1661/2023 is a third application preferred on behalf of the Appellant Ram Bahadur S/o Shri Sahdev R/o Village Kapsha, P.S.: Bhariya, District Allahabad, Uttar Pradesh, under Section 389 Cr.P.C. seeking suspension of sentence and grant of bail during the pendency of the appeal. On 18.01.2024, during the course of hearing, learned counsel for the Appellant prayed that production warrants be issued for production of the Appellant before this Court in order to ascertain if he was willing to accept the conviction and be released from custody on the sentence undergone.
2. Pursuant to order dated 18.01.2024, Appellant Ram Bahadur has been produced from judicial custody through video conferencing.



3. Learned counsel for the Appellant submits that Appellant was convicted by judgment dated 09.03.2017 in respect of FIR No.701/2014 registered at PS: Najafgarh, Delhi under Sections 376/452/506 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and was sentenced to RI for a period of 12 years and fine of Rs.20,000/-, with default sentence of 6 months for the offence punishable under Section 6 read with Section 5(m) of the POCSO Act and the Appellant has undergone over 10 years of sentence with remission though he has not paid the fine since he did not have the financial resources to do so. Appellant has undergone the minimum sentence of 07 years under the pre-amended Section 376 IPC and is willing to accept the conviction and does not press the appeal. Prayer is made to release the Appellant on sentence undergone in line with the directions issued by the Supreme Court in order dated 06.10.2021 passed in *Sonadhar v. State of Chhattisgarh* in *SLP (Crl.) 529/2021*. It is further submitted that Appellant is 60 years of age and suffering from age related health issues. He has no criminal antecedents and his overall jail conduct is 'satisfactory'. Appellant was released on interim bail on five occasions but never misused the concession granted by the Court or violated the bail conditions. Reliance is placed on orders of the Co-ordinate Benches of this Court, wherein having undergone a substantial sentence, Appellants have been released on sentence undergone on accepting conviction viz. *Balak Ram and Another v. State* in *CRL.A. 149/2003*, decided on 15.10.2015; *Akshay v. State* in *CRL.A. 141/2016*, decided on 28.02.2023; *Sonu v. State* in *CRL.A. 281/2023*, decided on 10.05.2023; and *Subhash v. State, 2024 SCC OnLine Del 597*.



4. Mr. Yudhvair Singh Chauhan, learned APP appearing for the State submits that Appellant has been convicted for serious and grave offences and there is enough scientific evidence against him to uphold the conviction. He, however, submits that in view of the order of the Supreme Court in *Sonadhar (supra)*, the final decision is left to the Court to pass appropriate orders. In the same vein, Ms. Arora, learned counsel for the Complainant states that looking at the gravity of the offence and the age of the prosecutrix, Appellant should not be released on the sentence undergone, as this would be disproportionate to the gravity of the offences committed.

5. I have heard the learned counsels for Appellant and the Complainant as well as the learned APP for the State.

6. Record shows that Appellant has been convicted and sentenced to RI of 12 years along with fine of Rs.20,000/- and a default sentence of 06 months in offence punishable under Section 6 read with Section 5(m) of POCSO Act. Appellant has admittedly undergone sentence of over 10 years with remission and a minimum sentence of 07 years under pre-amended Section 376 IPC. The Supreme Court in *Sonadhar (supra)*, while dealing with the status of criminal cases, huge pendency of trials and appeals etc. in Courts, long incarceration periods of both under-trials and convicts, *inter alia* gave the following directions:-

“SLP(CRL.) NO. 514/2021

APPEALS PENDING BEFORE THE HIGH COURTS WHICH ARE BEING LOOKED AFTER BY THE HIGH COURT LEGAL SERVICES COMMITTEES :

Mr. Devansh A. Mohta, learned Amicus Curiae presented the aspects arising from appeals pending before the High Courts which are being looked after by the High Court Legal Services Committee. A detailed exercise was undertaken with the Secretary, Delhi High Court Legal Services Committee on account of data and proximity and a list of all



criminal appeals, which accused is in custody, pending in the Delhi High Court and being looked after by the High Court Legal Services Committee was prepared and a chart shared with the NALSA.

What emerges from the chart is that in 232 such cases fixed term sentences have been imposed ranging from 3 years to 20 years while the remaining 129 cases are life sentence cases. In fixed term sentences, the accused in some cases has undergone more than half the sentence, if not more, similarly in some life sentence cases, the accused has undergone custody for more than 10 years.

The other High Court where this aspect has been explored is the Chhattisgarh High Court, more so, in the context of the reliance placed by Mr. Mohita on rule 149 of the High Court of Chhattisgarh as recorded in the Order dated 07.07.2021. It is in view thereof certain suggestions have been made and we have heard learned counsel for parties. We are in broad agreement with these suggestions and would seek to expand on the same.

We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser



sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.”

(Emphasis supplied)

7. As a pilot project or a test case, the Supreme Court directed the two High Courts, as referred therein, to get in touch with the convicts to find out whether they were willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone. Basis the order of the Supreme Court and the objective behind the directions, this Court has in aforesaid cases directed release of the convicts, who had undergone substantial sentence and were willing to accept the infractions of law.

8. Court has interacted with the Appellant who, after conferring with his counsel, states that he is willing to accept the conviction and does not wish to press the criminal appeal on merits and prays that he be released from custody on the sentence undergone. Upon interacting with the Appellant, Court is satisfied that he is remorseful for the offence committed and has attempted to explain the circumstances in which it was committed.

9. Latest nominal roll has been requisitioned from the Jail Superintendent which confirms the period of sentence undergone by the Appellant. It fortifies the stand of the Appellant that his jail conduct is ‘satisfactory’ and he has been working as a Jail Factory Sahayak. There are no criminal antecedents of the Appellant and he was released on interim bail on five occasions intermittently between 27.02.2018 to 08.05.2023 and never misused the concession granted by the Court. Appellant is 60 years of age and is suffering from health issues. Para (c) of the directions in ***Sonadhar (supra)***, as extracted above, allows release of prisoners, who have been awarded a fixed term sentence, if they are willing to accept the infraction, on the sentence undergone. On an overall conspectus of the case



and the mitigating circumstances brought forth by the learned counsel for the Appellant as well as considering the sentence undergone, this Court is of the view that the case of the Appellant falls within the scope and ambit of the order of the Supreme Court in *Sonadhar (supra)*. Accordingly, while upholding the judgment of conviction dated 09.03.2017, the sentence awarded to the Appellant vide order dated 15.03.2017 (including sentence of fine imposed) is reduced to the period already undergone. *Ex-consequenti*, Appellant is directed to be released from prison on the sentence undergone, as he is not required in any other case.

10. Appeal is disposed of in the aforesaid terms along with all pending applications.

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

JYOTI SINGH, J

FEBRUARY 12, 2024/kks/shivam