

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CR.A. No. 278 of 2018

Himanchal Yadav, S/o. Nathoram Yadav, Aged About 26 Years, R/o. High School Para, Police Station Lailunga, District Raigarh Chhattisgarh.

--- Appellant.

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station - Lailunga, District Raigarh Chhattisgarh.

---Respondent

01/10/2019	Mr. Sunil Otwani with Mr. Ajit Yadav, counsel for the appellant. Mr. Ghanshyam Patel, G.A. for the State. Heard on I.A. No.1/2019, second application for suspension of sentence and grant of bail. The first bail application for suspension of sentence and grant of bail is dismissed as withdrawn vide order dated 27.09.2018 with liberty to revive the same after one year. Appellant has been convicted by the judgment of conviction and order of sentence dated 07.02.2018, passed in POCSO Act No.72/2016 by the learned Additional Sessions Judge, FTC, Raigarh, District- Raigarh (C.G.) in the following manner with a direction to run both the sentences concurrently:- <table><tr><td>U/s. 366 of the Indian Penal Code.</td><td>:</td><td>R.I. for 3 years and fine of Rs.1000/- and in default of payment of fine, further under go one month of rigorous imprisonment.</td></tr></table>	U/s. 366 of the Indian Penal Code.	:	R.I. for 3 years and fine of Rs.1000/- and in default of payment of fine, further under go one month of rigorous imprisonment.
U/s. 366 of the Indian Penal Code.	:	R.I. for 3 years and fine of Rs.1000/- and in default of payment of fine, further under go one month of rigorous imprisonment.		

U/s. 6 of Protection of Children from Sexual Offences Act, 2012.	:	R.I. for 10 years and fine of Rs.2000/- and in default of payment of fine, further under go two months of rigorous imprisonment.
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Learned counsel appearing for the appellant would submit that the appellant has been erroneously convicted by the trial Court. The trial Court has observed in his judgment that the prosecutrix in this case was a consenting party. The appellant has successfully disputed the age of the prosecutrix to show that she was not a woman of below 18 years. The scribe of the school register or Kotwar was not examined before the trial Court. The conclusion has been drawn by the trial Court only on the basis of the statement of the Investigation Officer. Therefore, the appellant has good case to defend. Hence, it is prayed that the sentence of imprisonment against the appellant be suspended and he may be enlarged on bail.

Per contra, the learned State counsel opposes the prayer for suspension of sentence and grant of bail. It is submitted that there is clear statement given by the prosecutrix herself and Investigating Officer to show that the prosecutrix was a minor on the date of incident and on that basis conviction has been recorded, therefore, the appellant is not entitled for grant of bail.

I have heard the learned counsel for the parties.

After perusing the deposition of the prosecutrix (P.W.-1), Doctor (P.W.5) and Investigation Officer (P.W.-6) and the impugned judgment, this Court is of the opinion that it is a fit case to suspend the sentence and release the appellant on bail.

Accordingly, I.A. No.1/2019, application for suspension of sentence and grant of bail, is allowed.

Execution of substantive jail sentence imposed on appellant shall remain suspended and he is directed to be released on bail on his executing a personal bond for a sum Rs.25,000/- with one surety

for the like sum to the satisfaction of the trial Court for his appearance before the Registry of this Court on **10th December, 2019**. He shall thereafter appear before the trial Court on a date to be given by the Registry of this Court and shall continue to appear there on all such subsequent dates as are given to him by the said Court, till the disposal of this appeal.

Certified copy as per rules.

Sd/-

(Rajendra Chandra Singh Samant)

Judge