

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 673 of 2022

- Tikam Chouhan S/o Nohar Singh Aged About 22 Years R/o Near Tahsil Office Bagbahara, Thana Bagbahara, District Mahasamund (C.G.) At Present Address House Of Raju Sahu, Shitla Para Thana Jgudhiyari District Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station- Gudhiyari, District Raipur (C.G.)

---- Respondent

18/04/2023	Mr. Mayank Chandrakar, Advocate for the appellant. Ms. Shivali Dubey, Panel Lawyer for the State. Heard on IA No.1 of 2022, application for suspension of sentence and grant of bail to the appellant. By the impugned judgment dated 26.03.2022 passed by the learned Additional Sessions Judge(F.T.C.)(POCSO) Raipur,(C.G.) in Criminal Case No.-88/2019, the Appellant stands convicted as under:- <table><tr><th>Conviction</th><th>Sentence</th></tr><tr><td>U/s 363 of IPC.</td><td>Rigorous imprisonment for 3 years & fine of amount Rs.500/- and in default of payment of fine one month additional rigorous imprisonment.</td></tr><tr><td>U/s 366 of IPC.</td><td>Rigorous imprisonment for 3 years & fine of amount Rs.500/- and in default of payment of fine one month additional rigorous imprisonment.</td></tr><tr><td>U/s 376(2)(n) of IPC.</td><td>Rigorous imprisonment for 10 years & fine of amount Rs.5000/- and in default of payment of fine three month additional rigorous imprisonment.</td></tr></table> As the conviction of the appellant is under the POCSO Act, therefore, notice was issued to the victim on 10.5.2022. Pursuant to the notice issued, father of the victim appeared in person and raised his objection which was already recorded by this Court.	Conviction	Sentence	U/s 363 of IPC.	Rigorous imprisonment for 3 years & fine of amount Rs.500/- and in default of payment of fine one month additional rigorous imprisonment.	U/s 366 of IPC.	Rigorous imprisonment for 3 years & fine of amount Rs.500/- and in default of payment of fine one month additional rigorous imprisonment.	U/s 376(2)(n) of IPC.	Rigorous imprisonment for 10 years & fine of amount Rs.5000/- and in default of payment of fine three month additional rigorous imprisonment.
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Learned counsel for appellant submits that without there being any sufficient evidence available on record, trial Court has wrongly convicted the appellant. On perusal of statement of victim PW-1, it is clear that she was consenting party as she herself left her house, joined company of appellant, went along with him to Pune and stayed there for about two months and during this period, she did not not raise any objection. With regard to age of the victim, it is submitted by counsel for appellant that though as per school admission register, date of birth of the victim is 08.02.2002. However, father of victim PW-2 in his cross-examination deposed that his marriage was solemnized in the year of 1999 and after four years of his marriage, his first child was born and two years thereafter, the prosecutrix was born. Meaning thereby, prosecutrix was born in the year 2006, therefore, on the date of incident the victim was above 18 years. Thus no offence is made out against the appellant. Appellant was on bail during trial and he has not misused liberty granted to him. There is no likelihood of this appeal for coming up for final hearing in near future, hence, it is prayed that appellant may be released on bail by suspending sentences imposed on him.

On the other hand, learned counsel for the State has opposed bail application and submissions made in this respect.

I have heard both the parties and perused the record of the trial Court.

Considering the fact of the case, submission of learned counsel for appellant, appellant was on bail during trial and that disposal of this appeal is likely to take time, I am of the view that present is a fit case where appellant is entitled to be released on bail during pendency of this appeal.

Accordingly, the bail application is allowed. It is directed that execution of substantive jail sentence imposed upon appellant shall remain suspended during the pendency of this appeal and he shall be released on bail on his furnishing personal bond for a sum of 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 **07.08.2023**. 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.

List this case after eight weeks.

Sd/-

(Arvind Singh Chandel)

Judge