

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Cr.A. No. 1127 of 2022

Bhoj Kumar Banjare S/o Late Hira Singh Aged About 28 Years R/o Village Kugda, P.S. Kumhari, District Durg (C.G.)

---- Appellant

Versus

State Of Chhattisgarh Through - Station House Officer, Kumhari, District Durg (C.G.)

---Respondent

13.12.2022	Shri B.P. Singh, counsel for the appellant. Shri Lalit Jangde, Dy. G.A. for the State/respondent. In pursuant to the order dated 24/08/2022 passed by this Court, victim/prosecutrix appeared along-with her mother stated that they have no objection for grant of bail to the appellant. Heard on I.A.No. 01/2022, which is an application for suspension of sentence and grant of bail to the appellant. The appellant has preferred this appeal against the order of conviction and sentence passed in Special Session (POCSO) No. 194/2019 decided on 30/06/2022 by the Additional Session Judge, Fast Track Court (POCSO), 2012, Durg, District – Durg (C.G.) by which the appellant has been convicted for commission of offence and sentence as under :- <table><tr><th>Offences</th><th>Sentence</th></tr><tr><td>U/s 6 of the POCSO Act, 2012</td><td>R.I. for 10 years and fine of Rs. 1000/- in default of payment of fine to undergo additional S.I. for 01 months.</td></tr></table> Learned counsel for the appellant would submit that the victim (P.W.-1) appeared before the trial court and stated that the appellant has made physical relationship with her on the pretext of marriage and also stated that if she would become pregnant then appellant takes responsibility of the victim. The	Offences	Sentence	U/s 6 of the POCSO Act, 2012	R.I. for 10 years and fine of Rs. 1000/- in default of payment of fine to undergo additional S.I. for 01 months.
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victim in her cross-examination has stated in para-16 that on the date of incident neither the appellant has called the victim at Kitchen Garden nor he has prevented her to move also stated that she had gone voluntary with the appellant. Learned counsel for the appellant would further submit that P.W.-3, Sumain Kundu, Principal, Government Higher Secondary School, Kugda, Block Patan was examined before the trial court and in his cross examination he has stated that the entry of the date of birth of the victim in the School record was not made by him, therefore, it is non compliance of Section 35 of the Evidence Act, 1872. The prosecution has also examined P.W. 4, Medical Officer to prove the case of prosecution. In her examination-in-chief she has stated that she cannot give definite opinion with regard to immediate sexual intercourse. Learned counsel for the appellant would further submit that since offence has not been proved as per Section 35 of the Evidence Act and even as per the statement of the victim that her date of birth at the time of lodging F.I.R. is 17 years 11 months and 28 days, and fact that the age of the victim has not been proved, still he has been convicted for the commission of offence under section 6 of the POCSO Act, 2012, therefore, the conviction is bad in Law and he would pray for suspension of sentence.

On the other hand learned State counsel opposes the submission and would submit that the prosecution has prove their case beyond reasonable doubt, therefore, sentence awarded to the appellant is legal and justified.

Considering submission made by the learned counsel for the appellant and from perusal of the records it is quite vivid that there was a love affair between the appellant, and victim/prosecutrix, and victim has no where objected with regard to sexual intercourse committed by the appellant, also considering the fact that the age of the victim has not been proved as per the Section 35 of the Evidence Act. The fact that the appellant remained in jail for 01 year and 04 months, appeal is of the year 2022, and appeal is likely to take sometime till final disposal of the case. I am inclined to suspend the sentence

of the appellant and grant of bail.

Accordingly, application for suspension of sentence and grant of bail is **allowed** and it is directed that execution of further substantive jail sentence of the appellant shall remain suspended and he shall be released on bail executing a personal bond in sum of **Rs. 25,000/-** with one surety in the like sum to the satisfaction of trial Court for his appearance before the Registry of this Court on **24th January, 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. It is made clear that for appearance of the appellant before the trial court the interval between the dates to be given by the trial court should be three months.

List this case for **final hearing** in due course.

C.C. as per rule.

Sd/-
(Narendra Kumar Vyas)
Judge