

**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Sheet****CRA No.1495 of 2018**

- Netram Birhor S/o Kendaram Birhor Aged About 35 Years R/o Village Sakin, Amaldih, Police Station Kartala, District (Revenue And Civil) Korba Chhattisgarh, District : Korba, Chhattisgarh

**---- Petitioner****Versus**

- State Of Chhattisgarh Through District Magistrate, Korba District (Revenue And Civil) Korba Chhattisgarh, District : Korba, Chhattisgarh

**---- Respondent**

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| 16/01/2019 | <p>Shri Vineet Kumar Pandey, counsel for appellant/s.<br/>Shri Subhash Yadav, GA for State.</p> <p>Heard on application for suspension of sentence and grant of bail filed by the appellant/s.</p> <p>The appellant has been convicted vide judgment of conviction and order of sentence dated 10-08-2018 passed by the learned Additional Sessions Judge (F.T.C.), District Korba in Sessions Trial No.92/2007 for the offences punishable under Section-302 of IPC and he was sentenced to undergo Life Imprisonment and fine of Rs.500/- under Section 302 of IPC and in default of payment of fine, the appellant has to undergo additional RI for six months.</p> <p>Learned counsel for the appellant would argue that the case of the prosecution rests only on the shaky evidence that when the cultural programme was going on in the village, in the midnight, the appellant had taken the girl, aged 7 years, from the lap of one Ratai. Learned counsel for the appellant submits that the evidence of Chamra Chouhan, PW-3 is doubtful, because in the merg intimation recorded by the police, said to be at the instance of Chamra Chouhan, PW-3, it is said that the child was sitting in the lap of Devnath, whereas in the Court statement of Chamra Chouhan, PW-3, it is said that child was sitting in the lap of Ratai. It is argued that neither Ratai Bai nor Devnath has been examined by the prosecution and</p> |

the entire case of the prosecution rests only on this evidence.

On the other hand, learned State counsel opposed the prayer for suspension of sentence and grant of bail by submitting that even though, Ratai and Devnath have not been examined by the prosecution, but the evidence of Chamra Chouhan, PW-3, brother of the deceased, who was at the time of incident, 15 years of age, supports the prosecution story that the child was taken by the appellant and later on, dead body of the child was found near the mosque.

Having considered the submission of learned counsel for the parties, particularly taking into consideration that the case of the prosecution rests on the evidence of Chamra Chouhan, PW-3, but Ratai Bai and Devnath have not been examined by the prosecution and except this, there is no other evidence to connect the appellant with the alleged commission of offence and further that the appellant had already undergone more than 10 years of jail sentence and further taking into consideration that the appellant is suffering from mental illness, the application for suspension of sentence and grant of bail filed on behalf of appellant is allowed.

It is directed that the substantive jail sentence imposed upon the appellant shall remain suspended during pendency of this appeal and he shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with two local sureties of the like amount to the satisfaction of the trial Court for his appearance before the concerned trial Court on **15-03-2019** and on all such further dates as may be directed to him, interval being not less than six months, till final disposal of the appeal.

Certified copy as per rules.

SD/-  
**(Manindra Mohan Shrivastava)**  
Judge

SD/-  
**(Rajani Dubey)**  
Judge