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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 702/2023, CRL.M.A. 23414/2023, 23416/2023, 23417/2023**
KUNJ RAMAppellant

Through: Mr. Vijay Datt Gahtori, Mr. Shankar
Datt Ghatori and Mr. Rishabh Rai,
Advs.

versus

STATE OF NCT DELHIRespondent

Through: Mr. Aman Usman, APP for State with
SI Sangeeta, PS: Shahbad Dairy.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **12.08.2024**

CRL.M.(BAIL) 1223/2023

1. An application under Section 389 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the appellant for suspension of sentence and release on bail during pendency of appeal in FIR No. 0598/2016, under Section 376 IPC and Section 4 POCSO Act, registered at PS: Shahbad Dairy.
2. Appellant has been convicted vide judgment dated 25.03.2023 and sentenced vide order dated 09.05.2023 to undergo Rigorous Imprisonment (RI) for 12 years and fine of Rs. 4,000/- (in default of payment of fine to undergo SI for 08 days) for offence punishable under Section 376(2)(i) IPC with benefit of Section 428 Cr.P.C.
3. Learned counsel for appellant submits that there are major contradictions in the statement of the victim (PW-1) and her brother (PW-2).

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He submits that according to the victim, while she was playing in the gali, appellant who is presently aged about 72 years, had caught her hand and pulled her inside his house, wherein, he inserted his finger in her private part. However, on hearing the screams of victim, a boy looked inside the house and in the meantime, victim was able to flee. On the other hand, the brother of victim (PW-2) deposed that when he was present at the barber shop on the aforesaid date at about 01:15 PM, on hearing noise, he rushed to the house of appellant who resides near his house and saw that main door of the house was closed from inside and on knocking the door, he heard the cries of his sister. Further, public also gathered at the spot and when accused / appellant opened the door, he was apprehended.

Learned counsel for appellant further emphasizes that allegations were not corroborated on medical examination, of the victim as no injuries were found and hymen was also found intact. He further urges that appellant is in custody for little less than two years and shall shift his residence from vicinity of victim during pendency of appeal, if so directed.

4. On the other hand, learned APP for the State opposes the application and submits that keeping in perspective Section 29 of POCSO Act, no reasonable defence has been raised on behalf of appellant to show that incident had not occurred as deposed by the victim. He submits that there are contradictions in the defence taken by the appellant since there are some contradictions in the suggestions which were given to the witnesses. Further, the members from the public gathered at the spot had assaulted the appellant, which corroborates the incident. He further points out that contradictions in testimony of PW-2, who is also a minor, cannot be taken into consideration.

5. I have given considered thought to the contentions raised.



Admittedly, as per the MLC, no injuries were found on the victim and hymen was observed to be intact. There appear to be contradictions striking to the root of the case which requires deeper consideration as to the manner in which the incident is alleged to have happened. The testimony of the PW-2 (brother of victim (PW-1)) reflects that he reached the spot on hearing cries of victim who was inside, whereupon, appellant had been apprehended while the version of victim (PW-1) is that she had already escaped. Appellant is alleged to have taken the victim forcibly into his house while she was playing in daylight but none of the independent witnesses was examined by prosecution to support the same.

Appellant who is presently aged about 72 years is in custody for a period of about 01 year 02 months and 10 days, as on 07.11.2023 and has earned remission for 24 days. He is further stated to be in custody till date.

Considering the facts and circumstances and contradictions which have been pointed out by learned counsel for appellant, without expressing any opinion on the merits of the case, sentence of the appellant is suspended during pendency of appeal and is admitted to bail on furnishing a personal bond in sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with one surety in the like amount to the satisfaction of the learned Trial Court and subject to following conditions:

- (i) Appellant shall provide his mobile number to the Investigating Officer (IO) / SHO concerned at the time of release;
- (ii) In case of change of address, appellant shall intimate / communicate his fresh address to the IO/SHO concerned as well as learned Trial Court;
- (iii) Appellant shall not reside within 02 kms of vicinity from the



house of the victim and shall change his residence as submitted
by learned counsel for appellant.

Application is accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and
Superintendent Jail for information and compliance.

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List in due course.

ANOOP KUMAR MENDIRATTA, J

AUGUST 12, 2024/R