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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 1082/2019**

ROSHAN KUMAR MISHRA

..... Appellant

Through: Mr Anurag Kumar Agarwal and Mr
Umesh Mishra, Advocates.

Versus

STATE

..... Respondent

Through: Ms Meenakshi Dahiya, APP for the
State with SI Neeraj, Police Station
Burari.
Mr Hemant Singh, Advocate
(DHCLSC) for complainant/victim.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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21.03.2024

CRL.M.(BAIL) 401/2022-Suspension of sentence

1. The present application has been filed under Section 389(1) CrPC seeking suspension of sentence.
2. The appellant has been convicted under Section 376(2)(n)/323/354/506 (Part-I) IPC and has been sentenced to undergo maximum imprisonment of 20 years for the said offences.
3. Learned counsel for the appellant/applicant submits that the appellant has already undergone sentence of 05 years and 07 months. On merits, he submits that the alleged incident of sexual assault is of April, 2017 and June,



2017 but no specific date and time has come on record with regard to the said incident. He further submits that the FIR came to be registered only on 27.10.2017 after an incident of quarrel took place between the petitioner and the parents of the prosecutrix on 25.10.2017.

4. He submits that there are material contradictions in the statement of the prosecutrix recorded under Section 161 CrPC and 164 CrPC *vis-a-vis* her testimony recorded by the court. Elaborating on his submission, learned counsel invites the attention of the Court to the statements of the prosecutrix recorded under Section 161 CrPC, 164 CrPC and the testimony recorded in the court.

5. He submits that besides various other contradictions, there is a contradiction as regards the threat of kidnapping and killing of brother extended to the prosecutrix. Though such an allegation is made in the statement under Section 164 CrPC but the same is conspicuously missing in the testimony of the prosecutrix recorded before the court.

6. Next, it has been pointed out that there is also a contradiction with regard to beating given by the present petitioner to the prosecutrix. It is specifically mentioned about such beatings in the statement under Section 164 CrPC but the same is not mentioned in the testimony recorded before the court.

7. He submits that there is also contradiction as regards the burn injury given to the prosecutrix. The prosecutrix in her statement recorded under Section 164 CrPC has not mentioned anything about the burn injury but the same finds mention in the testimony recorded before the court.

8. The MLC of the prosecutrix also records that she was habitual for sex many times in the past. It has also come in the evidence that the appellant,



as well as, the prosecutrix had exchanged 781 SMS and 59 calls.

9. Various contradictions and material improvements and other evidence that has been pointed out shows that there is some substance in the contention of the learned counsel for the appellant that the relationship between the appellant, as well as, the prosecutrix were consensual.

10. Learned counsel appointed by the Delhi High Court Legal Services Committee to represent the prosecutrix, on instruction states that the prosecutrix has no objection in case the sentence of the present appellant is suspended.

11. Further, the appeal is not likely to be taken up for hearing any time soon.

12. Considering the aforesaid circumstances, the sentence of the appellant is suspended during the pendency of the present appeal subject to his furnishing a Personal Bond in the sum of Rs.25,000/-and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the prosecutrix, as well as, her family members.

13. The application stands disposed of.



14. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
15. Order *dasti* under signatures of the Court Master.
16. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MARCH 21, 2024/MK