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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1198/2019**

SACHIN Appellant

Through Mr. Omkar Sharma, Adv.

versus

STATE OF DELHI Respondent

Through Mr. Tarang Srivastava, APP for State
SI Raju Yadav, PS Sultanpuri

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER
% **17.10.2019**

CRL.A. 1198/2019

Admit.

List in due course.

Trial Court record be requisitioned in the meanwhile.

CRL M(BAIL) 1833/2019

Vide the present application, the applicant/appellant seeks suspension of sentence awarded vide order dated 05.08.2019 by the Trial Court in SC No.74/2016 at PS Sultan Puri for the offences punishable under Section 6 of POCSO Act.

As per the prosecution case recorded in judgment dated 2.08.2019, DDA 91B dated 05.01.2016 at 9:40 PM was recorded on receipt of an information from Sanjay Gandhi Memorial Hospital, Delhi regarding admission of a girl about 18 years of age with history of ingestion of some unknown substance. Accordingly, the IO reached at the hospital where the

victim was declared as unfit for recording of statement. The doctor declared the victim fit for statement on 10.01.2016 and she gave her history of sexual assault of dated 01.01.2019 whereupon she was medically examined afresh. The IO recorded the statement of the victim to the effect whereby stated that she knew one boy namely Sachin (applicant/appellant herein) 'from past one year who was residing near to her grandmother's house (*dadi*) and she got acquainted with him. Thereafter, the appellant did wrong act with her for about 6 to 7 times and on 01.01.2016 at about 1:00 AM he called her on the roof and again committed wrong act with her. The prosecutrix insisted the appellant to marry her to which he agreed but a day before 05.01.2016 he called her and refused to marry her. Again on 05.01.2016, he met her and gave poison and told her to consume it and commit suicide as he will not marry her. She, therefore, consumed poison due to which got hospitalized. The statement of prosecutrix was got recorded under Section 164 Cr PC by the police.

Learned counsel for the applicant submits that as per records of the prosecution, the date of birth of the prosecutrix is 01.05.1998 and the alleged offence took place on 01.01.2016 when she was more than 17 ½ years of age. Further, the prosecutrix had been insisting the applicant to marry her though she herself had not completed even 18 years of age .

Learned counsel for the applicant denied the fact that he had given any poisonous substance to the prosecutrix and submits that since the applicant had refused to marry her, she herself consumed poison and was therefore, hospitalized. Further, the applicant remained in JC for 6 to 7 months during trial and is still in jail from last two months after the conviction.

Learned APP for the State on the other hand has vehemently opposed this application and submits that the applicant committed rape on the prosecutrix when she was not even 18 years of age and thus, her consent is immaterial. He further submits that it is the applicant who had given poison to the prosecutrix due to which she was admitted to hospital. Thus, in light of serious allegations against the applicant, he does not deserve any leniency or concession from this Court.

It is not disputed that the prosecutrix had completed 17 years and 8 months of age at the time of the offence. The age of the prosecutrix was near to maturity and she was of age at which she can differentiate as to what is right and wrong for her. It has nowhere been alleged that the applicant had forcibly committed rape upon the prosecutrix. Moreover, she had been insisting him for marriage that too when she herself was not of the required age for the purpose of marriage.

However, without going into merits and de-merits of the appeal, I am of the considered view that the present case is fit for grant of bail. Accordingly, I hereby suspend the sentence of the applicant till disposal of the appeal and consequently, he shall be released on bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Trial Court. The applicant shall ensure his presence as and when the appeal is taken up for hearing.

The application stands disposed of accordingly.

Copy of order be given *dasti* under signatures of the Court Master.

SURESH KUMAR KAIT, J

OCTOBER 17, 2019/SM