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

+ **CRL.A. 899/2024**

SUSHIL KUMAR JHA

.....Appellant

Through: Mr. Rajesh Mishra, Mr. Meenal Duggal and Mr. Suyash Sinha, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State.
SI Rahul Rathi, PS Sangam Vihar.
Ms. Astha (DHCLSC) and Ms. Megha Singh, Advocates for survivor.
Mr. Himanshu Anand Gupta (DSLSA), Mr. Sidhrth Barua, Mr. Shekhar Anand Gupta, Ms. Navneet Kaur, Mr. Mike Desai and Mr. Anvesh Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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23.05.2025

1. This hearing has been done through hybrid mode.

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2. The present application under Section 430 read with Section 528 of the BNSS has been filed seeking suspension of sentence and release of the appellant/applicant on bail during the pendency of the captioned appeal.

3. The captioned appeal under Section 415(2) read with Section 528 of the BNSS has been filed assailing the judgment and order on sentence dated 09.05.2024 and 24.06.2024, respectively passed by learned ASJ, South



District, Saket Courts, New Delhi, whereby the appellant has been convicted in SC No. 36/2021, arising out of FIR No. 39/2021, under Sections 376/323/392/506 of the IPC, registered at P.S. Sangam Vihar.

4. *Vide* the impugned judgment of conviction and order on sentence, the appellant has been convicted for the offences punishable under Sections 376/323/392/506 of the IPC. The appellant has been sentenced to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 376 of the IPC alongwith fine of Rs. 60,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one year. The appellant has also been sentenced to undergo rigorous imprisonment for a period of 3 months for the offence punishable under Section 323 of the IPC. The appellant has also been sentenced to undergo rigorous imprisonment for a period of 1 year for the offence punishable under Section 506 of the IPC. The appellant has also been sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable under Section 392 of the IPC alongwith fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of 1 month.

5. Learned counsel appearing on behalf of the applicant/appellant submits that the allegations made by the survivor are not supported by the MLC as well as FSL report which has been placed on record. It is submitted that allegations against the applicant/appellant were of dragging the survivor in the jungle while sexually assaulting her, however, the injuries in the MLC of the survivor does not correspond to the said allegations made against the applicant/appellant. It is further submitted that the FSL report with regard to the DNA has also come as negative and the same does not support the case of the prosecution. It is submitted that in the statement recorded under Section



164 of the CrPC before the learned Metropolitan Magistrate, survivor had stated that the face of the applicant/appellant was covered and thereafter, she had claimed to have identified him through CCTV footage. It is further submitted that the applicant/appellant has undergone 4 years and 4 months of incarceration out of the 10 years of sentence awarded to him.

6. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the survivor, submitted that MLC on record corroborates the allegations made by the survivor inasmuch as there was abrasion on her thigh and contusion on her lips. It is submitted that the CCTV footage shows the presence of the applicant/appellant at the spot at the relevant point of time.

7. As per the nominal dated 20.05.2025, the applicant/appellant. as on 15.05.2025, has undergone incarceration for approximately 4 years and 5 months, including remissions earned by him during the custody period, out of the sentence of 10 years awarded to him. The present appeal being of the year 2024 is not likely to be taken up for hearing in near future.

8. In the totality of the facts and circumstances of the present case, the sentence awarded to applicant/appellant, is suspended and he is directed to be released on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions: -

- i. The applicant shall not leave the country without prior permission of this Court.
- ii. The applicant shall intimate this Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before this Court as and when the matter is



taken up for hearing.

iv. The applicant shall provide his mobile number to the Investigating Officer and intimate about any change.

9. In view of the aforesaid, the application is allowed and disposed of accordingly.

10. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present application.

11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

12. Order be uploaded on the website of this Court *forthwith*.

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13. List in due course.

AMIT SHARMA, J

MAY 23, 2025/sn

Click here to check corrigendum, if any