

IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No. 4632 of 2020

in

Cr. Appeal (S.J.) No. 355 of 2019

...

Mithlesh Thakur @ Mithun Thakur @ Mitiesh Thakur ... Appellant

-V e r s u s-

The State of Jharkhand

.....

Respondent

...

Coram: HON'BLE MR. JUSTICE AMITAV K. GUPTA

...

For the Appellant : Mr. Diwakar Upadhyay, Advocate.

For the State : Mr. Shiv Kumar Sharma, APP.

...

I.A. No. 4632 of 2020

...

07/09.02.2021

1. This interlocutory application has been filed under Section 389 (1) of the Code of Criminal Procedure for suspension of the sentence and grant of ad-interim bail to the appellant, during the pendency of the appeal.
2. The appeal is directed against the judgment dated 21.01.2019, passed by the court of learned Additional Sessions Judge-I-cum-Children Court, Chatra in Children Act Case No.7 of 2017, whereby the appellant has been found guilty and convicted for the offence under Sections 4 and 8 of the Protection of Children (From Sexual Offences) Act, 2012 (for short POCSO Act) and under Section 376 of the Indian Penal Code. The appellant has been sentenced to undergo imprisonment of 7 years and a fine of Rs.20,000/- in default, thereof, to suffer simple imprisonment of 2 months.
3. Heard the learned counsel for the appellant and learned A.P.P. On perusal of the evidence on record, it appears that the victim has been examined as P.W. 1 and she has not supported the allegation, as made in the F.I.R. P.W. 2 and P.W. 3, the father and mother have

also not supported the case. P.W. 4, P.W. 5 and P.W. 6-independent witnesses have also not supported the case. P.W.8, the Doctor, on medical examination, found that the victim was carrying a foetus of 32 to 34 weeks'. In the F.I.R. it is alleged that the rape was committed on the victim on 02.02.2017 and the F.I.R. was lodged on 25.05.2017. Thereafter, the victim was examined on 26.05.2017. The age of the foetus does not corroborate the date of commission of rape. Neither any DNA profiling was done to establish the culpability of the appellant.

4. Considering the materials on record, the appellant is directed to be enlarged on bail, during the pendency of the appeal, on his furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I-cum-Children Court, Chatra in connection with Children Act Case No. 7 of 2017.

5. In the result, I.A. No. 4632 of 2020 stands allowed.

(AMITAV K. GUPTA, J.)