

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)

Cr. Appeal (DB) No. 1118 of 2023

Ashok Lohra	-----	...	...	Appellant
	Versus			
The State of Jharkhand		...	...	Respondent

CORAM : HON'BLE MR. JUSTICE RATNAKER BHENGRA
HON'BLE MR. JUSTICE AMBUJ NATH

For the Appellant(s)	: Mr. Abhishek Krishna Gupta, Advocate
For the State	: Mrs. Priya Shrestha, SPP

Order No.03/ Dated: 17th January, 2024

I.A. No. 9723 of 2023

The present Interlocutory Application has been filed on behalf of the appellant for suspension of sentence, during pendency of this criminal appeal.

The learned counsel for the appellant submits that incident is of 23.5.2021 and the FIR was lodged on 24.5.2021. There is no whisper of any abduction or even rape that was made out. Subsequently, during investigation, the prior incident of 18.5.2021 came to light wherein there is allegation of abduction and rape. The learned counsel further submits that even though there is allegation of abduction and rape which had occurred on 18.5.2021 but it is a mystery that why the FIR was not lodged on the same day and they had waited till 23.5.2021 for lodging the FIR and also in the FIR there is no mention of abduction or rape. He has further submitted that it is difficult to believe that three persons had come on a bike to commit the deed and would have abducted the victim and take her on the same bike. The learned counsel for the appellant further points out the evidence of PW-1 and submits that main allegation is against Kapil Dev Turi as his name is consistently coming in the evidence and not against this appellant. The allegation against this appellant is that he was making video of the incident which had occurred on 18.5.2021 but no where it has come on record as to what has been video-graphed, however, it is on record that three mobile phones were seized which belong to the accused persons but nothing has been exhibited. Therefore, allegation regarding making of video is not proved and, hence, the appellant cannot be held liable for the offence under section 376(D) of the IPC. He has further submitted that no independent eyewitness has supported the case of prosecution even though as per IO there were many houses near the place of occurrence. The learned counsel further submits that prior to the conviction, the appellant was in

custody for five months and after conviction he is in custody till date.

The learned counsel for the State has opposed the prayer for suspension of sentence and has submitted that incidents of 18.5.2021 and 23.5.2021 need to be taken together. The learned counsel has further submitted that PW-1, in her evidence, has fully described the incident as to how she was kidnapped. She has clearly said that she was sexually assaulted by Kapil Dev Turi and the appellant was making video of the same assault and, hence, offence under section 376(D) is fully made out. The learned counsel has further submitted that the period of custody spent by the appellant is too short to the imposed sentence. Hence, the appellant does not deserve privilege of suspension of sentence, during pendency of this criminal appeal.

Having gone through the records of the case, noted the arguments advanced by the learned counsels for the parties and in the facts and circumstances of the case, we are not inclined to suspend the sentence of the appellant, during pendency of this criminal appeal in connection with Spl. POCSO Case No. 27 of 2021, arising out of Chandwa PS Case No. 61 of 2021. Hence, his prayer for suspension of sentence, during pendency of this criminal appeal stands rejected.

Accordingly, I.A. No. 9723 of 2023 is dismissed.

(Ratnaker Bhengra,J.)

SB/KNR

(Ambuj Nath, J.)