

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.1066 of 2024

Shiv Narayan Singh aged about 53 years, son of Late Bhuneshwar Singh resident of village Belma, P.O. and P.S.-Nimiaghat, District Giridih

Appellant

Versus

The State of Jharkhand

Respondent

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant	: Mr. Rajesh Kr. Mahtha, Advocate
For the State	: Mr. Manoj Kr. Mishra, APP

04/Dated: 18.12.2024

I.A. No.8114 of 2024

1. The instant interlocutory application has been filed under Section 430(1) of the Bhartiya Nagarik Suraksha Sanhita, 2023 for suspension of sentence dated 19.04.2024 passed by the learned Special Judge, POCSO, Giridih in connection with Session Trial Case No.94 of 2017, arising out of Nimiaghat P.S. Case No.54 of 2016, whereby and whereunder, the appellant has been convicted for the offence under Sections 376, 201, 313 and 120B of the IPC and Section 4 of the POCSO Act and sentenced him to undergo R.I. for life along with fine of Rs.25,000/- and in default of payment of fine, he has to undergo R.I. for six months under Section 4 of the POCSO Act. Further, he has been directed to undergo R.I. for three years along with fine of Rs.5,000/- and in default of fine, R.I. for one month and further R.I. for seven years along with fine of Rs.5,000/- and in default of fine, he has further been directed to undergo R.I. for

three months under Sections 313/120B of the IPC.

2. Learned counsel for the appellant has submitted that it is a case where the appellant has been convicted without any cogent evidence.

3. The submission has been made that the prosecution version has itself quantified that after the victim having been found to be pregnant for 7-8 months that too after abortion of the foetus, the FIR has been instituted. The appellant has already remained in custody for more than 8 years and ½ month and as such, taking into consideration the entire aspect of the matter, the prayer suspension of sentence may be allowed.

4. While on the other hand, Mr. Manoj Kr. Mishra, learned APP appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence.

5. It has been contended by referring to the testimony of P.W.2, wherein, the prosecution version has conclusively been supported. It has been submitted that so far as the contention raised on behalf of the appellant that the FIR has been instituted after 7-8 months of pregnancy, the same is only due to the fear in the mind of the victim.

6. It has been submitted by referring to the testimony of P.W.2, victim that it is not a case of physical relationship, rather, it is a case of sexual assault and rape upon the victim, due to which, she became pregnant.

7. Learned State counsel, based upon the aforesaid ground, has

submitted that there is ingredient of Section 376 as also Section 4 of the POCSO Act and as such, it is not a fit case for suspension of sentence.

8. We have heard the learned counsel for the parties and gone across the finding recorded by the learned trial court in the impugned judgment as also the testimony of the witnesses along with other exhibits, as available in the Lower Court Records.

9. This Court, in order to appreciate the argument advanced on behalf of the parties, has gone through the testimony of P.W.2, victim wherefrom, it is evident that P.W.2 has conclusively supported the prosecution version.

10. It has been deposed by her that the appellant has committed rape upon her once, due to which, she became pregnant. It has also been deposed that when she has not disclosed the aforesaid fact due to fear and when pregnancy became of 7-8 months, then, the people came to know about the same and thereafter, the Panchayati was conducted and in the said Panchayati, the decision was taken to get the pregnancy aborted. The cost of the abortion has been borne by the present appellant.

11. This Court, considering the testimony of P.W.2 since she has supported the prosecution version, therefore, is of the view that it is not a fit case for suspension of sentence.

12. Accordingly, the interlocutory application being I.A. No.8114 of 2024 stands dismissed.

13. It is made clear that any observation made herein will not prejudice the issue on merit as the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

Rohit/-