

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. Appeal (D.B) No. 1092 of 2019**

Karan Tantu Bai ..... Appellant  
Versus  
The State of Jharkhand ... Respondent

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**  
**Hon'ble Mrs. Justice Anubha Rawat Choudhary**  
Through Video Conferencing

---  
For the Appellant : Mrs. Rashmi Kumar, Advocate  
For the State : Mrs. Vandana Bharti, A.P.P  
---

**06/27.10.2021** Heard learned counsel for the appellant, Mrs. Rashmi Kumar nominated by High Court Legal Services Committee to represent the appellant and learned A.P.P, Mrs. Vandana Bharti on the prayer for suspension of sentence of this appellant made through I.A. No. 10369 of 2019.

Sole appellant stands convicted for the offence punishable under Section 376(2) of I.P.C and Sections 6, 10 of POCSO Act by the impugned judgment dated 05.12.2018 passed in SPECIAL POCSO Case No. 39 of 2018 by the Court of learned Additional Sessions Judge-1<sup>st</sup>-cum-Special Judge-cum-FTC, Bokaro and has been sentenced to undergo Rigorous Imprisonment for 14 years with a fine of Rs. 20,000/- under Section 376(2) of I.P.C and default sentence by the impugned order of sentence dated 06.12.2018. However, no separate sentence has been awarded under POCSO Act in view of Section 42 thereof.

Learned counsel for the appellant submits that the case of the prosecution of rape upon 8-9 years old girl is not supported by the medical evidence of Doctor (P.W.6), who examined her on the next date i.e. 12<sup>th</sup> April, 2018 at 05:50 p.m., by any stretch of imagination vide Ext.-4, medical report. No injury on private part i.e., vagina or anus was found. No sign of recent sexual intercourse was found. Ext.5 is the vaginal swab report, which also does not suggest presence of sperm. The appellant has been falsely implicated and except related witnesses i.e. P.W. 1, maternal grandmother, P.W.3, elder sister, P.W.7, father and informant, other witnesses, P.W. 2 and P.W.9 are hearsay. The case has not been established to the hilt. No material exhibits of clothes were sent to F.S.L. Surprisingly, the husband of the elder sister of the victim (P.W.3), in whose house the offence was allegedly committed, has not been examined. The incidence is said to have happened at around 07:30 p.m in the evening. The house of the victim and her elder sister (P.W.3) are separate. It is wholly unlikely that at such point of time, the victim would happen to be in the house of elder sister and the appellant would also arrive with an intention to

2.

commit rape upon her. In any case, no ingredients of rape have been proved and the appellant has not been charged with the offence of attempt to rape. Therefore, appellant who is in custody since 12<sup>th</sup> April, 2018 may be enlarged on bail by suspending the sentence.

Learned A.P.P. for the State has opposed the prayer. She submits that the victim (P.W.4), who is 8 years old and has also been determined to be between 8-9 years as per the radiological examination by P.W. 6, the doctor, has clearly narrated the immoral and illegal act of the appellant, who took her into the washroom and tried to commit rape upon her when the elder sister arrived and managed to save her. She found both the victim and the appellant were naked. The other prosecution witnesses such as P.W. 1 and P.W 7 have also supported the occurrence. No motive to implicate the appellant falsely has been shown on the part of the defence. Therefore, appellant may not be enlarged on bail, at this stage.

We have considered the submission of learned counsel for the parties and taken note of the materials relied upon by them from the Lower Court Records, including the period of custody said to have been undergone by him.

On consideration of the materials on record, particularly the statement of 8 years old victim (P.W.4), her elder sister (P.W.3) and other witnesses, we are not inclined to enlarge the appellant on bail, at this stage considering the gravity of offence. Accordingly, his prayer for suspension of sentence is rejected.

Consequently, I.A. No. 10369 of 2019 is dismissed.

**(Aparesh Kumar Singh, J)**

**(Anubha Rawat Choudhary, J)**