



CRA-1699-2021

[1]

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No. 1699 of 2021

- Devendra Sidar, S/o Fulsingh Sidar, aged about 20 years, Resident of Village Kachhar, Police Station Bhupdevpur, District Raigarh (Chhattisgarh)

.... **Appellant**

Versus

- State of Chhattisgarh, through Station House Officer, Police of Police Station Kotra Road, Raigarh, District Raigarh (Chhattisgarh)

.... **Respondent**

Division Bench:

Hon'ble Shri Justice Sanjay K. Agrawal &

Hon'ble Shri Justice Sanjay S. Agrawal

06/07/2022	Mr. T.K. Jha, Advocate for the appellant. Mr. Ashish Tiwari, Panel Lawyer for the respondent-State. Mr. Satish Singh Thakur, Advocate for the objector. Heard on IA No.01 of 2021, which is an application filed under Section 389 of Cr.P.C. for suspension of sentence and grant of bail on behalf of the appellant-Devendra Sidar. By impugned judgment of conviction and order of sentence dated 30.10.2021, the appellant has been convicted for offences: under Sections 363 of IPC and sentenced to undergo 04 years' rigorous imprisonment with fine of Rs.2,000/-, and in default of fine, additional rigorous imprisonment of 03 months; under Section 366 of IPC and sentenced to undergo 07 years' rigorous imprisonment with fine of
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Rs.5,000/-, and in default of fine, additional rigorous imprisonment of 03 months; under Section 376 of IPC and sentenced to undergo 10 years' rigorous imprisonment with fine of Rs.15,000/-, and in default of fine, additional rigorous imprisonment of 06 months and also under Section 06 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo 20 years' rigorous imprisonment with fine of Rs.20,000/- and, in default of fine, additional rigorous imprisonment of 06 months (*All substantive sentences are directed to run concurrently*).

Mr. T.K. Jha, learned counsel for the appellant submits that the appellant is in jail since 15.12.2019. He has not committed any offence and has been falsely implicated. It is urged that the victim was major on the date of offence and she was the consenting party. By taking this Court to the statement of the victim (PW-01), he argued that the victim being a major girl has visited the house of the appellant-accused many times on her own wish and consent, which fact she did not disclosed to anyone over a span of time. The victim on her own volition was in love relationship with the appellant-accused and use to have consensual sexual intercourse with the appellant-accused, due to which, she also became pregnant. Further, in Para-14 of her cross-examination, the victim has clearly stated that she wants to solemnize marriage with the appellant. It is further argued that as per opinion of Dr. Sangeeta Kalar (PW-04), who has medically examined the victim on 14.12.2019, there is no external or internal injury found on the body of the victim and according to the statement of Dr. Rajesh B. Goswami (PW-10), the age of the victim is in between 16 to 18 years vide Age Certificate-cum-Radiologist Report (Ex.P/19) and it can vary 02 years on either side. Even in the FSL report (Ex.P/27), it has been opined that there is no spot of semen/sperm found either on the vaginal slides of the victim or in her undergarments.

Learned counsel for the appellant in support of his contention relied on AIR



1982 SC 1297, Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir and others, followed in **(2011) 10 SCC 192, Mohd. Imran Khan vs. State of Government (NCT of Delhi)** and submits that the learned trial Court without appreciating the oral and documentary evidence available on record in its correct perspective has convicted the appellant for the aforementioned offences by recording perverse findings, which is contrary to law, thus, appellant be enlarge on bail by suspending his jail sentence.

Per-contra, Mr. Ashish Tiwari, learned State counsel opposed the application and submits that date of birth of the victim is 02.04.2003 and the date of incident is 14.12.2019, as such, the victim was 16 years, 08 months and 21 days on the date of offence. She being minor on the date of offence, therefore, her consent is inadmissible in the eyes of law. It is further submitted that there is sufficient material available on record to connect the appellant-accused with the offences and the learned trial Court has rightly convicted the appellant for the offences aforementioned and, therefore, the present application deserves to be rejected.

Mr. Satish Singh Thakur, learned counsel appearing for the objector drew our attention towards an affidavit sworn by the victim herself before this Court, which he has filed alongwith Covering Memo dated 05.07.2022 (Doc. No.05/2022), wherein it has been clearly stated that the victim and the appellant herein were in love relationship with each other for past three years and she wants to solemnize marriage with the accused-appellant herein.

We have heard learned counsels for the parties, considered their rival submissions made herein-above and went to the material available on record with utmost circumspection.

Admittedly, according to the medical examination report of the victim (Ex.P/09) there were no internal or external injuries found on the body of the victim, but hymen was ruptured, which fact is duly proved by the statement of Dr. Sangeeta



Kalar (PW-04), who has medically examined the victim. Thereafter, the victim was referred to Dr. Rajesh B. Goswami, MBBS, MD (Forensic Medicine), who has examined the victim for her age determination by radiology, whereby the age of the victim was found to be between 16 to 18 years which can vary 02 years on either side vide Ex.P/19.

The Supreme Court in the matter of **Jaya Mala (supra)** has held that one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side, which is followed in later judgment of the Supreme Court in the matter of **Mohd. Imran Khan (supra)**.

Taking into consideration the facts and circumstances of the case, submissions made by learned counsels for the parties and the material available on record, particularly the statement of the victim (PW-01), wherein she has stated before the Court that she has visited the house of the appellant number of times and had sexual intercourse with the appellant, which fact she did not inform to anyone over a span of time and further in Para-14 of her statement she has specifically stated that she wants to solemnize marriage with the appellant and same stand has also been taken by the learned counsel for the objector before this Court coupled with medical evidence available on record i.e. medical examination report of the victim (Ex.P/09), wherein no internal or external injuries were found on the body of the victim but hymen was ruptured, which is duly proved by the statement of Dr. Sangeeta Kalar (PW-04) and the Age Certificate-cum-Radiologist Report (Ex.P/19), wherein age of the victim was found to be in between 16 to 18 years which can vary 02 years on either side, which is duly proved by Dr. Rajesh B. Goswami (PW-10) and the FSL report (Ex.P/27), wherein no spot of semen/sperm has been found either on the vaginal slides or in the undergarments of the victim and in view of *dicta* of their Lordships of Supreme Court in the matters of **Jaya Mala (supra)** and **Mohd. Imran Khan (supra)**, we are of the opinion that it is a fit



case for entertaining/allowing appellant's application for suspension of sentence and grant of bail.

Accordingly, the substantive jail sentence awarded to the appellant- **Devendra Sidar** by the learned trial Court is hereby suspended during the pendency of this appeal and he is directed to be released on bail on his furnishing a bail bond of Rs.25,000/- (Rupees Twenty Thousand Only) with one surety for the like amount to the satisfaction of the concerned trial Court, for his appearance before the Registry of this Court on 12th of September, 2022. He shall thereafter appear before the concerned trial Court on a date to be given by the Registry of this Court and shall continue to appear there on all such subsequent dates as are given to him by the said Court, interval being not less than 6 months, till the disposal of this appeal.

Consequently, IA No.01 of 2021 is **allowed**.

However, it is made clear that observation made by us herein-above are only for the purpose of deciding application for suspension of sentence and grant of bail (i.e. IA No.01 of 2021) and this Court has not expressed any opinion on the merits of the case.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay S. Agrawal)
Judge