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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 48/2023**

JUGINDER

..... Appellant

Through: Mr. Abhinav Bajaj, Advocate
(DHCLSC), Mr. Saksham Ojha and
Ms. Geetashi Chandna, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with SI Abhishek, PS Harsh
Vihar
Ms. Aishwarya Rao, Advocate for
prosecutrix

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

02.11.2023

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CRL.M.(BAIL) 73/2023 (for suspension of sentence)

1. The appellant/applicant vide the present application under Section 482 read with Section 389 of the Code of Criminal Procedure, 1973 seeks suspension of sentence and release of the appellant on bail during the pendency of appeal against the judgement of conviction dated 01.08.2022 passed in Sessions Case No.59/2018 by the learned ASJ-01 & Special Judge (POCSO), Shahdara District, Karkardooma Courts, Delhi whereby the appellant has been convicted for the commission of offence punishable under Sections 342/376 of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and the order on sentence dated 01.10.2022 whereby the appellant

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has been sentenced to undergo *rigorous imprisonment for a period of 10 years with fine of Rs.10,000/- and in default of the same to undergo simple imprisonment for 3 months* arising out of FIR No.465/2017 registered under Sections 342/376/506 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at PS.: Harsh Vihar, Delhi.

2. Learned counsel for the appellant submits that the appellant has already undergone sentence of more than *5 years*, which is more than half of the sentence awarded to him.

3. This Court, vide order dated 17.01.2023, issued notice. Further, vide order dated 18.10.2023, Status Report was called for and the latest Nominal Roll alongwith the Medical Report of the appellant was also requisitioned from the concerned Jail Superintendent. As per Nominal Roll, the jail conduct of the appellant has been '*Satisfactory*' and he has been serving as a "*Sewer Panja Sahayak*". Further, as on 31.10.2023, he has already undergone a period of *5 years, 11 months and 18 days* in judicial custody.

4. Learned APP for the State submits that in view of the judgement passed in *Sonadhar v. State of Chhattisgarh*, 2021 SCC OnLine SC 3182, she has no objection, if the present application is allowed.

5. This Court has heard the learned counsels and perused the documents on record.

6. Without adverting to the merits of the case, this Court is of the opinion that since the appellant has already undergone more than half of the awarded sentence, i.e. a substantial period of *5 years, 11 months and 18 days*, and since the hearing of the appeal is likely to take further time,



in view of the directions of the Hon'ble Supreme Court in *Sonadhar v. State of Chhattisgarh(supra)* and *Saudan Singh v. State of Uttar Pradesh*, 2021 SCC OnLine SC 3259 wherein it has been held that in cases other than the ones concerning life sentences, the broad parameter of 50% of the actual sentence undergone can be the basis for grant of bail, this Court deems it a fit case to suspend the sentence of the appellant till the pendency of the appeal. This Court also finds support from the judgment of the Hon'ble Supreme Court in *Bhagwan Rama Shinde Gosai v. State of Gujarat* (1999) 4 SCC 421 wherein it has been held that in cases where expeditious hearing of appeals cannot be effectuated, the Appellate Court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Further, in light of the aforesaid factors, when the appellant has already exhausted a sufficient time behind bars and the hearing of the appeal is likely to take some time, this Court is of the opinion that further judicial custody of the appellant would be violative of Article 21 of the Constitution of India.

7. Accordingly, the present application is allowed and the sentence of the appellant, convicted in FIR No.465/2017 registered under Sections 342/376/506 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at PS.: Harsh Vihar, Delhi vide judgement of conviction dated 01.08.2022 passed in Sessions Case No.59/2018 by the learned ASJ-01 & Special Judge (POCSO), Shahdara District, Karkardooma Courts, Delhi, is suspended pending disposal of the present appeal, on him furnishing a personal bond in the sum of Rs.25,000/- (*Rupees Twenty Five Thousand*) with one



surety of the like amount furnished by a family member/friend having no criminal record, subject to the satisfaction of the learned Registrar (Criminal) of this Court and further subject to the following conditions

- a. Appellant shall not leave NCT of Delhi without prior permission of the Court.
 - b. Appellant shall provide his permanent address to the Ld. Registrar (Criminal). The appellant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
 - c. Appellant shall appear before the Court as and when the matter is taken up for hearing.
 - d. Appellant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
 - e. Appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/ prosecutrix or any member of the complainant/ prosecutrix's family or tamper with the evidence of the case.
8. Copy of this order be forwarded to the concerned Jail Superintendent for information and compliance forthwith.
9. Accordingly, the present application stands disposed of in the above terms.
10. Needless to say, the observations made on the merits of the matter,



if any, are purely for the purposes of adjudication of the present application for suspension of sentence and shall not be construed as expressions on the merits of the matter.

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11. List in due course on its own turn.

SAURABH BANERJEE, J

NOVEMBER 2, 2023/rr