

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

% Reserved on: 17<sup>th</sup> January, 2022  
Pronounced on: 25<sup>th</sup> January, 2023

+ **CRL.M.BAIL. 816/2022 in CRL.A. 32/2021**

NANHE ..... Appellant

Through: Ms. Rakhi Dubey, Adv.

versus

STATE (GNCT OF DELHI) ..... Respondent

Through: Mr. Ritesh Kr. Bahri, APP for  
the State with SI Himanshu.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**  
% **JUDGMENT**

**ANISH DAYAL, J.**

1. This application has been filed for regular suspension of sentence till the final disposal of the appeal which has assailed the judgment of conviction dated 24<sup>th</sup> July 2019, and order on sentence dated 26<sup>th</sup> July 2019 in proceedings related to FIR No.142 of 2013 P.S. Welcome under Sections 363, 366, 376, IPC and Section 6 of POCSO. As per the order on sentence the learned Trial Court awarded RI for a period of 10 years for offense punishable under Section 6 POCSO and a fine of Rs. 10,000 with (SI for 3 months in default of payment of fine). The appellant has undergone custody for a period of about 5 years, 3 months and as per the Nominal Roll, there are no previous involvements and the jail conduct has been satisfactory. The

appellant has not sought any interim bail or parole throughout the period of incarceration.

2. Learned counsel for the appellant has contended that as per the case of the prosecution, on 18<sup>th</sup> June 2012, the parents of the prosecutrix had gone to the hospital for treatment and when they returned they found their daughter missing. After 10 months of the missing complaint being filed, an FIR was registered under Section 363 IPC. However, on 10<sup>th</sup> July 2013, the victim was found at the appellant's house and statement was recorded under Section 164 Cr.P.C. The victim clearly stated that they were in a romantic relationship and on 18<sup>th</sup> June 2012, she had gone to Kashipur, along with the appellant and performed the *nikah* ceremony and now she had a child of about four months. She had stated that she went with her consent and wanted to live with the appellant. However, in these circumstances Section 366/376 IPC and Section 6 POCSO were added to the FIR.

3. Learned counsel for the appellant submitted that the victim was 14 years old at the time she eloped with the appellant she was now married and had a child and as per Muslim Law, a Muslim girl can get married after attaining the age of puberty. Further, the victim was found missing on 18<sup>th</sup> June 2012, but had later approached the Hon'ble High Court of Allahabad for seeking protection from the parents, which petition was disposed of *vide* order dated 10<sup>th</sup> May 2013. The parents had approached the police after 10 months clearly showing that the parents of the victim knew the whereabouts of the victim and then made a complaint in order to pressurize her and the appellant. It was further contended that the victim had gone out of her

free will on 18<sup>th</sup> June 2012 while the POCSO Act itself came into force on 14<sup>th</sup> November 2012 and therefore it is not applicable.

4. Learned APP countered the submissions of the appellant and stated that even though the FIR was registered on 17<sup>th</sup> April 2013, the act which formed the basis of the offence was continuing. The victim was also hurt by the said act and stated that even though the appellant has not assaulted her, she does not wish that he would be released on bail.

5. Notwithstanding the vague submission made by victim, it is evident that the victim had eloped with the accused voluntarily and had married the appellant as per her own wish. Without adverting to the merits of the matter, a perusal of the testimony of PW-2, the prosecutrix would also show that there are contradictions in the same and the apprehension of the appellant that she has been made to testify due to the pressure of the parents, cannot be ruled out. In her testimony, she further states that she had not complained when she was being taken in a bus by the appellant, nor when she was living with the appellant in Kashipur and that she had not created any noise so that people who were around would know that she was forcibly taken. She further confirmed in her testimony that she that she had stated before the learned MM that she had performed the *nikah* with the appellant when she was having a 4 months old female child as also that she had had a romantic relationship with the appellant.

5. In view of these facts and circumstances, this Court is of the considered view that the appellant is entitled for regular suspension of sentence.

6. The appellant has undergone substantial period of sentence and the appeal is likely to take some time for hearing. In view of the

directions of the Hon'ble Supreme Court in *Sonadhar v. The State of Chhattisgarh*, SLP (Crl.) 529/2021 *vide* order dated 6th October, 2021, as well as *Saudan Singh v. State of Uttar Pradesh*, 2021 SCC OnLine SC 3259 (where the Hon'ble Supreme Court has stated that in cases other than life sentence cases the broad parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail) this Court deems it fit to suspend the sentence of the appellant. It is therefore directed that the sentence of the appellant be suspended pending the hearing of the appeal, on furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court/ CMM/ Duty Magistrate, further subject to the following conditions:

- i. Appellant will not leave the country without prior permission of the Court.
- ii. Appellant shall provide permanent address to the Ld. Trial Court. The appellant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Appellant shall appear before the Court as and when the matter is taken up for hearing.
- iv. 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.
- v. Appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with the

complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

7. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression on merits of the matter.

8. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

9. Accordingly, the application is disposed of. Pending applications (if any) are disposed of as infructuous.

**ANISH DAYAL, J**

**JANUARY 25, 2023/RK**

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