

fine amount additional imprisonment of one month. Both the sentences were directed to run concurrently.

- 2.** At the outset, it has been submitted that this Court provided an opportunity to the learned State counsel to file objection, as would be evident from order dated 11.08.2023. Pursuant thereto, objection affidavit has been filed.
- 3.** Learned counsel for the appellant has submitted that it is a case where the prosecution has miserably failed to prove the charge, beyond all reasonable doubt, as per the finding recorded by learned trial Court in the impugned judgment, whereby the appellant was convicted under Section 366, 376(2)(n) of the Indian Penal Code and under Section 6 of the POCSO Act. Such contention has been made on the ground that there is no reference of commission of sexual assault as per the statement, as recorded of the victim under Section 164 Cr.P.C.
- 4.** However, the victim subsequent thereto has changed its version while deposing in course of trial by stating that she was subjected to sexual assault 2-3 times.
- 5.** It has been contended on the basis of aforesaid ground that the statement recorded under Section 164 Cr.P.C which has been marked as Exhibit P/1/1 by the Judicial Magistrate (P.W. 8) who was also examined and cross-examined but there is no reference in the impugned judgment about the statement recorded under Section 164

Cr.P.C. and the statement which has been recorded by the girl in course of trial.

- 6.** It has been contended that the girl even before the I.O. has not uttered a word about commission of sexual assault by the appellant.
- 7.** Learned counsel for the appellant on the basis of aforesaid ground has submitted that the impugned judgment since has been passed giving complete go by to the statement of the victim girl recorded under section 164 Cr.P.C. even though the same is of the corroborative value but once the statement has been recorded under section 164 Cr.P.C. it is the bounden duty of the learned trial Court to consider either way. Thus, the submission has been made that it is a case where the version of the girl appears to be improved as per the testimony recorded in course of trial. Therefore, it is a fit case where the sentence is to be suspended.
- 8.** While on the other hand, learned A.P.P. appearing for the respondent-State has submitted by referring to the statement of the victim, P.W. 1, who has supported the prosecution version of commission of establishing physical relation 2-3 times. The submission has been made that her testimony has also been corroborated by other witnesses and hence, if the learned trial Court based upon the testimony of prosecution witnesses has found the ingredient of Sections 366, 376(2)(n) of the Indian Penal

Code and under Section 6 of the POCSO Act, available against the appellant, which led the learned trial Court to convict the appellant for the aforesaid offences, which cannot be said to suffer from error. Therefore, it is not a case where the sentence is to be suspended.

9. We have heard learned counsel for the parties, gone across finding recorded by the learned trial Court and the documents available in Lower Court Record as also the objection affidavit filed by the respondent-State.

10. It appears from the record that the statement of the girl, immediately after recovery, was recorded before the Magistrate. We after going through the statement recorded under section 164 Cr.P.C. has found that there is no reference of commission of sexual assault. However, in course of trial, the victim, who has been examined as P.W. 1, on the Court query has deposed that she was subjected to sexual assault 2-3 times.

11. We have considered the testimony of the I.O. in order to come to the conclusion with respect to the version of the victim, and found from paragraph 14 of the testimony of the I.O., who was examined as P.W. 6, wherein the I.O. has denied that mother of the victim has said about commission of sexual assault against her daughter.

12. It further appears from the testimony of the doctor that the doctor (P.W. 7) has not corroborated about the commission of sexual assault.

- 13.** Regard being had to the facts and circumstances of the case, we are of the view that the instant Interlocutory Application deserves to be allowed.
- 14.** Accordingly, I.A. No. 6995 of 2023 stands allowed.
- 15.** In view thereof, the appellant named above, is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge-POCSO Act, Dhanbad in Spl. POCSO Case No. 51 of 2022 arising out of Chirkunda P.S. Case No. 70 of 2022.
- 16.** It is made clear that any observation made hereinabove will not prejudice the case of the prosecution on merit since the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)