HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. (SOS) Application No.1129/2022

In

S.B. Criminal Appeal No. 1736/2022

Vijendra @ Vijay Son of Shri Kajodmal, aged 21 years, r/o House No.994, Manoharpur Kachchi Basti, Jagatpura, Police Station Jawahar Circle, Jaipur (Raj.)
(At present in Central Jail, Jaipur)

----Appellant

Versus

State of Rajasthan, through PP

----Respondent

For Appellant(s) : Ms. Prathishtha Sunger
For Respondent(s) : Mr. S.S. Mehla, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

31/03/2023

This instant application for suspension of sentence is filed in pending appeal arising out of order of conviction and sentence dated 02.08.2022 in Sessions Case No.27/2021 passed by learned Special Judge (POCSO Act, Cases) No.2, Jaipur Metropolitan First.

Learned counsel for the appellant submits that the age of victim on date of incident was more than 18 years and she was not proved to be minor on date of incident, therefore, learned trial court has erred while convicting appellant under the POCSO Act. She has further submitted that when FIR was registered and victim was recovered, she has given an application Ex.P6 to police to inform that she has voluntarily traveled with appellant. She has further submitted that after the recovery her statement under Section 161 Cr.P.C. was recorded as Ex.D2 and in all these

documents nowhere allegation of sexual intercourse was made against present appellant. She further submitted that appellant was released on bail by Hon'ble Court on the ground that the age of victim in Aadhar Card was clearly indicate that she was major at the time of alleged offence and appellant has already spent more than two and half years in custody. She has further submitted that no medical evidence was produced to corroborate the allegation of rape. She has further submitted that after being pressurized by parents, the victim has changed her statement and same cannot be relied upon to convict present appellant. She has further submitted that there are lots of discrepancies in the statement of victim prosecutrix wherein she has admitted to travel in public areas and has not sought any help from any one, despite the fact that there were tolls and police outposts on road sides. She has further submitted that none of the prosecution witnesses corroborated the story of prosecution, hence, appellant is entitled to be released on bail.

Aforesaid contentions are opposed by learned Public Prosecutor.

Heard learned counsel for the appellant and also learned Public Prosecutor. Perused the material available on record.

The victim was examined as PW-4 before learned trial court whereas father of victim was examined as PW-1 and mother of victim as PW-2. The statements clearly indicate that present appellant is maternal uncle of victim, therefore, it is established that there is a family relationship between these two individuals. The report Ex.P1, which was registered by PW-1 clearly indicated that the name of present appellant was mentioned and allegation

of enticing away her girl having age of 17 years was made on him. The victim was recovered on 16.10.2019. Thereafter, she has expressed her desire to reside with her parents and this was recorded as Ex.P6. The statement under Section 161 Cr.P.C. was recorded on 16.10.2019 and same was Exhibited as Ex.D2 but the statement under Section 164 Cr.P.C. was recorded on 18.10.2019 and same was Exhibited as Ex.P9 after the charge-sheet the victim was examined as Ex.P4. The deposition was recorded in form of questions and answers and it clearly indicate that allegation of wrong doing was made on present appellant. FSL report Ex.D3, which was referred clearly indicated that no human semen was detected on underwear, vaginal swab/smear of victim.

Herein, PW-1 and PW-2 clearly indicated that they were not aware about date of birth of other children, though, it was admitted by PW-1 that in one of Aadhar Card, the date of birth of victim is 01.01.2001. PW-8 Mahesh was examined to prove the date of birth of victim, which clearly indicates that the document, which were of prior to date of incident.

Aforesaid school record clearly indicates that the date of birth of victim was 13.08.2002 as concluded by learned trial court otherwise also date of birth as provided in Aadhar Card cannot be considered as conclusive proof of date of birth for the purpose determination of age wherein other material on record is available. No other suggestion other than as that of date of birth as discussed herein was made in learned trial court. The victim has clearly indicated involvement of present appellant who is maternal uncle of victim.

Looking to facts and circumstances of the case, application for suspension of sentence cannot be allowed on this ground alone that appellant was released on bail after two and half years in custody during trial.

Therefore, the application for suspension of sentence is liable to be dismissed.

Misc. application, if any, stands disposed off.

(ASHOK KUMAR JAIN),J

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