

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.936 of 2018

Arising Out of PS. Case No.-40 Year-2015 Thana- AMBA District- Aurangabad

1. Deepak Kumar @ Sunny
2. Rahul Kumar, Both are Son of Yogendra Singh, R/o Vill.- Balia, P.S.- Amab, District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vishwanath Prasad Singh, Sr. Advocate
		Mr. Javed Aslam, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

15 23-07-2024

Re. I.A. No.3 of 2021:-

Mr. Vishwanath Prasad Singh, the learned Senior Advocate for the appellants/applicants presses the afore-noted interlocutory application seeking suspension of sentence during the pendency of the present appeal.

2. The State has been represented by Mr. Sujit Kumar Singh, the learned APP.

3. The appellants have been



convicted under Sections 366A and 376D of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012, *vide* judgment dated 03.05.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (POCSO Act), Aurangabad in G.R. Case No. 864 of 2015/46 of 2015 arising out of Amba P.S. Case No. 40 of 2015. By order dated 10.05.2018 they have been sentenced to undergo R.I. for seven years, to pay a fine of Rs.10,000/- and in default of payment of fine, to further suffer imprisonment for three months for the offence under Section 366A of IPC and to undergo imprisonment for life, to pay fine of Rs.50,000/- for the offence under Section 376D of IPC.

4. The written objection on behalf of the State is on record.

5. The appellants and two others are said to have kidnapped the victim, a 17



years old girl and gang-raped her.

6. For the purposes of suspension of sentence, Mr. Singh has argued that the appellants have remained in jail for six years. He has further contended that the victim in her statement under Section 164 of Cr.P.C. though talked about her being kidnapped at the hands of the appellants but she did not utter a word regarding any rape having been committed on her. It has also been submitted that the victim in her deposition before the Court though has given her date of birth as 13.02.1998 but in the same breath she has claimed that after her matriculation, she passed the intermediate examination also.

7. If this statement is correct, then perhaps, the victim was more than eighteen years of age on the day of the occurrence.

8. Mr. Singh has, therefore, contended that in the absence of the Trial Court



having assessed the age of the victim, the jurisdiction of the POCSO Court to try the appellants is in doubt. Apart from this, it has been urged that from the reading of the deposition of the witnesses, it becomes very clear that the victim, if taken away from her home, voluntarily went with the accused person. Mr. Singh has also argued that the allegations are not supported by medical evidence.

9. The learned APP, however, opposes the prayer for suspension of the sentence of the appellants citing the accusation and the fact that the victim has supported such allegation in her deposition before the Trial Court.

10. Considering the nature of allegation against the appellants, we are not inclined to suspend their sentence during the pendency of the appeal, notwithstanding the



fact that two other co-accused persons/co-convicts have been released on bail by a Co-ordinate Bench of this Court. We say so for the reason that the victim has not named those co-convicts in her deposition before the Trial Court and thus, their cases are different from the appellants.

11. The prayer for suspension of sentence of the appellants is rejected.

12. However, looking at the mandate of Section 374 (4) of the Cr.P.C., we deem it appropriate to direct the Registry for preparing the paper book of this case and getting this case listed for final hearing within first five case in the second week of November, 2024, commencing from 11th of November, 2024.

13. Interlocutory Application No. 3 of 2021 stands disposed of accordingly.



(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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