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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
CRA No. 2373 of 2018**

(PANKAJ @ PRAMOD Vs THE STATE OF MADHYA PRADESH)

Dated : 04-11-2022

Shri Vikas Saxena, learned counsel for the appellant.

Shri Rohit Shrivastava, learned Panel Lawyer for respondent/State.

Heard on **IA.11974/2022**, fourth repeat application under Section 389(1) of Cr.P.C. for suspension of sentence and grant of bail moved on behalf of sole appellant-Pankaj @ Pramod. His first application (IA.8832/2019) was dismissed for want of prosecution vide order dated 14.02.2020; second repeat application (IA.6464/2020) was dismissed on merits vide order dated 23.07.2020; and third repeat application (IA.4448/2021) was dismissed as withdrawn vide order dated 26.02.2021.

Appellant stood convicted under Sections 366 and 376(D) of IPC and sentenced to undergo RI for five years with a fine of Rs.5,000/- and RI for 25 years with a fine of Rs.10,000/- respectively with default stipulations vide judgment of conviction and order of sentence dated 25/01/2018 passed by Special Judge (POCSO), Karera, District Shivpuri (M.P.) in Special Sessions Trial No.34/2017.

As per prosecution story, prosecutrix (PW-1) is the resident of Motijheel Gwalior. Approximately 1-1/2 months back from 10.02.2017, she had come to her maternal uncle (PW-4) at Dinara from where the accused, having enticed on the ground of performance of marriage and given threat, got her to Navsari Gujarat where accused and the juvenile in conflict made physical relation with her. The application was submitted by the father of the prosecutrix on 25.02.2017 of she being missing at Police Station Dinara on the basis of which

FIR Ex.P-4 was reduced in writing. Prosecutrix (PW-1) on 04.03.2017 appeared at Police Station Purani Chhawani where recovery memo was prepared vide Ex.P-1. Prosecutrix was brought to Police Station Dinara where her statements were recorded. She was medically examined by Dr. Indu Jain (PW-6), report of which is Ex.P-2. Upon completion of investigation, charge-sheet was filed before the Sessions Court wherefrom the case was transferred to the Special Court for trial. The Special Court upon critical evaluation of the evidence placed on record and statements recorded, convicted and sentenced the appellant as referred above.

Learned counsel for the appellant while taking exception to the impugned judgment submits that the Special Court has not appreciated the evidence placed on record in correct perspective. Appellant has so far undergone jail incarceration for 5 years and 8 months. Co-accused in the present matter was juvenile who has already been acquitted by the Juvenile Justice Board, District Shivpuri (M.P.). The prosecutrix who was more than 16 years' of age at the time of incident had willingly gone along with the present appellant whereafter they remained at Navsari, Surat (Gujrat) under the same roof from 12.02.2017 to 01.03.2017. It is reflected itself from the complaint made by the father of the prosecutrix, Ex.P-3 and is apparent that the prosecutrix was not willing to come back to her parental home. Appellant was aged about 23 years at the time of incident and has suffered jail incarceration since long. There is no likelihood of early hearing of the appeal in the near future. Under such circumstances, it is submitted by learned counsel for the appellant that considering the age of the appellant and the period of custody he has suffered, appellant may be enlarged on bail.

Per contra, learned Panel Lawyer appearing on behalf of the

respondent/State, while supporting the impugned judgment, vehemently opposed the instant application with submission that the alleged offence has been committed by the appellant under Sections 366 and 376(D) of IPC for which he has been convicted and sentenced to undergo RI for 25 years. Since it's a case of gang rape, considering the gravity of offence, *modus operandi* of appellant and as the offence may be affecting the society at large, it is prayed that no case is made out for grant of suspension of sentence and grant of bail.

Upon hearing learned counsel for the parties, though this Court refrains from commenting upon the rival contentions touching the merits of the case, however, considering the period of custody the appellant has suffered i.e. five years and eight months and the fact that there is no likelihood of early hearing of the appeal, therefore, in the obtaining facts and circumstances, the application deserves to be and is hereby allowed.

Accordingly, it is directed that the jail sentence of appellant-Pankaj @ Pramod shall remain suspended and he shall be released on bail subject to verification of the factum of depositing the fine amount and on his furnishing a personal bond in the sum of **Rs.2,00,000/- (Rupees Two Lacs only)** with one solvent surety in the like amount to the satisfaction of the trial Court. Appellant-Pankaj @ Pramod is directed to appear before the Registry of this Court first on **09/01/2023** and on other subsequent dates as may be fixed in this behalf with following further conditions:-

(i) the concerned jail authorities are directed that before releasing appellant, his medical examination be conducted through the jail doctor and if it is *prima facie* found that he is having any symptoms of COVID-19, then the consequential follow up action or any further test required be undertaken

immediately. If not, appellant shall be released on bail in terms of the conditions imposed in this order;

(ii) in case of violation of conditions, State is free to apply for cancellation of bail.

Accordingly, the I.A. stands allowed.

Observations on facts, if any, are only for the purpose of deciding the instant IA.11974/2022 and shall have no bearing on the merits of the appeal.

Certified copy as per rules.

(ROHIT ARYA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE

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DHARK
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