
(2020) 11 MP CK 0137

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 661 Of 2016

Ramdas @ Chhotu Yadav

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 26-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389(1)

Indian Penal Code, 1860 — Section 376, 506

Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2020) 11 MP CK 0137

Hon'ble Judges : J. P. Gupta, J

Bench : Single Bench

Advocate : R.S. Patel, Vinod Mishra

Final Decision : Allowed

Judgement

J. P. Gupta, J

Heard on I.A. No. 11736/2020 4th application filed by the appellant/ accused under section 389 (1) of Cr.P.C. for suspension of his jail sentence

awarded by the Special Judge, Narsinghpur, District Narsinghpur in Sessions Trial No.144/2013 vide its judgment dated 26.2.2016 convicting the

appellant/ accused under section 376 of the IPC and sentencing him to undergo RI for 10 years with fine of Rs.5000/-, under Section 506 of the IPC

sentencing him to undergo RI for 1 year with fine of Rs.1000/- and under Section 4 of the POCSO Act sentencing him to undergo RI for 10 years

with fine of Rs.5000/- with default stipulation as mentioned in the impugned judgment. Earlier none of the applications have been disposed of on merit.

Learned counsel for the appellant submits that the appellant is innocent. He has completed more than 5 years imprisonment. Disposal of this appeal

will take time. During trial he was on bail. Further, it is submitted that prima facie it is a case of consensual sexual relationship. So far as the age of

the prosecutrix is concerned, as per the prosecution, it was near about 17 years. However, there is no sound evidence to prove the aforesaid fact.

The primary source of entry in the school register with regard to the age of the prosecutrix has not been collected. As per father of the prosecutrix, at

the time of birth of prosecutrix, date of birth was recorded in the Register of Kotwar but the same has not been called and the school Register does

not show that the date of birth was recorded on the basis of the entry in the Kotwar Register and father of the prosecutrix was unable to disclose the

correct date of birth. In the circumstances, there is a fair chance of him to succeed in the case. If the execution of jail sentence is not suspended, this

counsel has prayed for Learned PL for the respondent-State has opposed the application and prayed for its rejection.

Considering the aforesaid facts and circumstances of the case, without commenting anything on merit, this application is allowed. It is ordered that

subject to payment of fine amount, if not already deposited, the execution of jail sentence of the appellant—accused Ramdas @ Chhotu

Yadav shall remain suspended during the pendency of this appeal and applicant/accused be released on bail on his furnishing personal bond for a sum

of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in the like amount to the satisfaction of the trial Court for his appearance before the trial

Court on 12.1.2021 and thereafter on all other such subsequent dates as may be fixed by the trial Court in this regard.

Â In case, the appellant is found absent on any date fixed by the trial Court, then the said Court shall be free to issue and execute warrant of arrest

without referring the matter to this Court, provided the Registry of this Court is kept informed.

C.C.as per rules.