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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1089 of 2021

With

CRIMINAL MISC.APPLICATION
(FOR SUSPENSION OF SENTENCE)
NO. 1 of 2021

In

R/CRIMINAL APPEAL NO. 1089 of 2021

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ASHWINBHAI @ RAJ RANCHHODBHAI POYALA

Versus

STATE OF GUJARAT

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Appearance:

MR M S PADALIYA, ADVOCATE for the Appellant

MR HARDIK SONI, APP for the Respondent State

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CORAM: **HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 09/08/2021

ORAL ORDER

1. Challenge in this appeal is made to the judgment and order passed by the Special Judge (POCSO) and 3rd Additional Sessions Judge, Junagadh dated 15.07.2021 in Special (POCSO) Case No.31 of 2019. The conviction is under Section and 376 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act. The sentence awarded is rigorous imprisonment for ten years. Fine is also imposed and in default thereof, simple imprisonment is imposed.

2. Appeal needs to be admitted.

3. Heard learned advocate for the appellant / applicant and learned Additional Public Prosecutor for the State.

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4. It is indicated that the applicant at present is in jail and is serving the sentence.

5. The glaring aspect of the matter is that, there is evidence Exh.76, which - because of legal requirement needs to be called as evidence of "the victim", who stated that, she on her own, because of her wish had walked out of home and she started living with the present appellant and with that relation she has given birth to two children, one on 29.06.2019 and second on 22.01.2021. Neither the mother nor the father of these two children disown their birth nor paternity and still the father is convicted inter alia under Section 376 of the Indian Penal Code and is ordered to undergo RI for 10 years. The Sessions Court is also conscious of this fact, since even in the operative part of the judgment in para:4, it is noted that since these two persons are staying as husband and wife, any compensation / assistance received from any of the Government(s) need to be refunded. It is under these circumstances, this Court finds that the present appellant need not be continued in custody any further. Further, wider issue about sustainability of convictions in the cases with such factual background may also require scrutiny by this Court, which may be gone into at a later stage.

6. Having heard learned advocates for the respective parties and having considered the material on record, including the conviction ultimately being sustained vis-a-vis the case against the applicant and evidence on record in support of it, this Court finds that, ends of justice would meet if the sentence is suspended during pendency of the appeal.

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7. In view of above, the following order is passed.

7.1 Appeal is admitted.

7.2 The application for suspension of sentence is allowed.

7.3 It is ordered that the sentence imposed on the applicant by the Special Judge (POCSO) and 3rd Additional Sessions Judge, Junagadh dated 15.07.2021 in Special (POCSO) Case No.31 of 2019, shall remain suspended during pendency of the appeal.

7.4 The applicant needs to be released on bail without any condition, however with a view to see that procedurally there is no difficulty for him, it is ordered that the applicant shall be released on bail on his furnishing personal bond of Rs.100/-.

7.5 Rule is made absolute in above terms.

8. Registry shall communicate this order to the concerned Authority / Court. It is stated that the applicant is at Central Jail, Rajkot.

Direct service is permitted.

(PARESH UPADHYAY, J)

MOBHATI/PS/66