

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

CrI. Appeal No.S-185 of 2024

(Pretam alias Vinod and another Vs. The State)

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A No.461/2024
2. For hearing of main case.

Date of hearing and Order: 13.08.2024

Mr. Hitesh Kumar Maheshwari, advocates for the appellants
Complainant Wishandas in person
Mr. Shahzado Saleem, Additional Prosecutor General Sindh
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ORDER

Adnan-ul-Karim Memon, J. This Criminal Appeal has been filed by the appellants Pretam alias Vinod & Sunny alias Pehlaj against the Judgment dated: 09-05-2024 passed by the learned Additional Sessions Judge-II/GBV/Anti Rape Court, Mirpurkhas in Sessions Case No.217/2022 whereby both the appellants have been booked, charged and tried and subsequently convicted as under;

“a. Both the accused Vinod alias Preetam and Sunny alias Pehlaj are convicted for the offence under section 367-A PPC and sentenced to suffer imprisonment for 03 years R.I and fine of Rs.50,000/- each. In case of default to pay fine, they shall undergo two months S.I more.”

2. In the intervening period, through the listed application being M.A No.461/2024, filed under section 426 Cr. P.C by the appellants seeking suspension of their sentence during the pendency of this appeal inter alia on the ground that the sentence awarded by the trial Court is short one i.e. three years and the hearing of the appeal would take considerable time; that the appellants have good prima facie case as the complainant has admitted in the evidence that FIR was lodged with delay of one day and even he didn't know about the names of the accused in the FIR and even he was not aware about opinion of the doctor that no laceration was seen on his person; that the children with whom victim went in festival have not been cited as witness; that another witness Sunil Kumar admitted that he saw the accused from back side when they ran away; he also admitted that he did not see the faces of the accused person; the victim stated that the accused Vinod caught hold his arms and restrained him for about half

an hour; he admitted that accused persons used to beat his brother prior to the incident; that doctor admitted that no marks of violence, abrasion or laceration found on the anal region of the victim. He also opined that no any perianal tear or anal tear. He also admitted that after receiving DNA report, he issued final MLC on 17-06-2022 in which he opined that attempt to commit sexual assault was not performed. Another doctor admitted that he did not find any semen stain on the clothes of the accused. He prayed for suspension of sentence during the pendency of the appeal in terms of section 426 Cr.P.C.

3. On the other hand, learned A.P.G assisted by the complainant contends that this appeal is mature and needs to be heard and decided on merits; however, he opposed the suspension of the sentence of the appellants.

4. I have heard the learned counsel for the parties on the listed application and perused the record with their assistance.

5. After going through the record, it appears that the sentence awarded by the trial Court is short one i.e. three years and the hearing of the appeal would take considerable time. Besides, the complainant has admitted that he was not aware about opinion of the doctor to the effect that no laceration was seen on the person of victim boy; that the children with whom victim went in festival have not been cited as witness; that another witness Sunil Kumar admitted that he saw the accused from back side when they ran away; he also admitted that he did not see the faces of the accused person; the victim stated that the accused Vinod caught hold his arms and restrained him for about half an hour; he admitted that accused persons used to beat his brother prior to the incident; that doctor admitted that no marks of violence, abrasion or laceration found on the anal region of the victim. He also opined that no any perianal tear or anal tear. He also admitted that after receiving DNA report, he issued final MLC on 17-06-2022 in which he opined that attempt to commit sexual assault was not performed. Another doctor admitted that he did not find any semen stain on the clothes of the accused. The aforesaid factums needs to be considered which is only possible after hearing the parties at some length. However, at this stage, learned Additional P.G has pointed out that this case needs thorough examination as the appellants have been

convicted for 03 years, and fine has been imposed and this appeal will take a long time to conclude. If this is the position of the case, and keeping in view the pendency of the heavy backlog of the cases at the dock of this Court, this appeal will take sufficient time to conclude as there are various legal aspects of the case to be considered after hearing of the parties. In such a scenario, the sentence awarded to the appellants vide impugned judgment dated 09-05-2024 in Sessions case No.217/2022 is hereby suspended. Consequently, the application being M.A No.461 of 2024 is allowed. The appellants/convicts namely Pretam alias Vinod and Sunny alias Pehlaj are directed to be released on bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two hundred thousand only) each and P.R bonds in the like amount to the satisfaction of Additional Registrar of this Court.

6. Adjournd to 02.09.2024 for hearing of the main appeal.

JUDGE

Ali Sher