

\$~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01.11.2019

+ CRL.REV.P. 1137/2019 and CRL.M.(BAIL) 1920/2019

MUSHTAK @ PALO Petitioner

Through: Mr. Jaspreet Singh, Adv.

versus

STATE Respondent

Through: Mr. Hirein Sharma, APP for State
with SI Jhabbu Ram, PS – Hari Nagar

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

J U D G M E N T (O R A L)

CRL.M.A. 39403/2019

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

CRL.REV.P. 1137/2019

3. Vide the present petition, the petitioner seeks direction thereby to set aside the main judgment dated 26.09.2019 passed by the learned Additional Sessions Judge (West), Tis Hazari Courts, Delhi, whereby the Criminal Appeal No.43/2018 has been dismissed. The petitioner further seeks direction thereby to quash the order and judgment dated 06.01.2018 passed by the learned Metropolitan Magistrate in FIR No. 226/2011, registered at Police Station – Khyala.
4. As per the prosecution case, on 18.09.2011 at about 08.00 PM at B-

Block park, Raghbir Nagar, Delhi, appellant/ convict had carnal intercourse which is against the order of nature with the victim (name withheld) aged about 12 years. After investigation, charge-sheet was filed against the petitioner and charge was framed under Section 377 IPC, to which he pleaded not guilty and claimed trial. The prosecution examined eight witnesses to prove its case and the petitioner/ accused has not examined any defence witness.

5. Based upon the evidence adduced by the prosecution, the learned Trial Court convicted the petitioner/ accused for the offence punishable under Section 377 IPC for a period of three years simple imprisonment and compensation of ₹20,000/- payable to the victim under Section 357 Cr.P.C. In default of payment of compensation, the convict shall undergo further simple imprisonment for a period of three months.

6. Learned counsel appearing on behalf of the petitioner/ accused submits that the accused is presently 27 years of age and is a married man and his wife is at the advance stage of pregnancy and submits that there is no previous criminal record of the petitioner and has undertaken not to indulge in any criminal activity of any sort in future. He submits that since the petitioner has already undergone 18 months' incarceration, while

maintaining the conviction, the petitioner may be released on the period already undergone.

7. Learned APP submits that if this Court is inclined to dispose of the present petition on the period already undergone, then the petitioner/accused may be directed to deposit an amount of ₹20,000/- to be paid in favour of the victim as directed by the learned Trial Court.

8. Learned counsel for petitioner, on instructions, submits that the compensation amount shall be paid in favour of the victim.

9. Accordingly, while maintaining the conviction against the present petitioner, I hereby modify the order on sentence dated 06.01.2018 that the petitioner shall be released on already undergone and on depositing the amount of ₹20,000/- by way of demand draft in favour of the victim, as directed by the learned Trial Court. On deposit of the amount, the Trial Court is directed to release the said amount in favour of the victim.

10. In view of the above directions, the petition is disposed of. Pending application is also disposed of.

11. Order *dasti* under the signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 01, 2019/PB