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Current's
**ALL INDIA
POCSO AND RAPE CASES**

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ACQUITTAL IN RAPE CASE

Acquittal In Rape Case - Appeal filed by de-facto complainant against acquittal of accused for offence of rape upon deaf and dumb victim - Evidence of victim and her parents supported prosecution case - Medical report did not reveal recent signs of rape though pregnancy confirmed - Trial court found inconsistencies and absence of proof regarding victim's age and treated her as not a child - Appellate court observed that presumption under Section 114A of Evidence Act not rebutted and testimony of victim was credible - Failure to consider special circumstances of disabled victim held erroneous - Judgment of acquittal set aside and conviction directed - Case remanded for appropriate sentencing - Appeal Allowed [*Jyotsna Ghosh vs. State of West Bengal and Another* (CALCUTTA HIGH COURT) 2026(1)PRC112]

AGE DETERMINATION DISPUTE

Age Determination Dispute - Victim and State challenged acceptance of 'B' summary report and refusal of reinvestigation in offence under POCSO and IPC - Victim claimed minor at marriage and time of offence - Discrepancies in birth dates from various records including private schools and ossification test - Court held that birth certificate issued by municipal body has greater probative value than private records or medical opinion - Found investigation and judicial approach consistent with statutory framework under Sec. 94 JJ Act - No case for reinvestigation made out - Petitions Dismissed [*XYZ; State of Maharashtra vs. State of Maharashtra; Chandulal S/o Suhail Kothari; Sunil Kochar; Paras Zumbarlal Lalwani; Rhushab Vikas Lalwani; Vikas Lalwani; Bhavesh S/o Vikas Lalwani; Bhavana Vikas Lalwani* (BOMBAY HIGH COURT) 2026(1)PRC33]

ASSAULT ON MINOR

Assault On Minor - Accused convicted for kidnapping and aggravated sexual assault on mentally challenged minor - Victim found undressed in sugarcane field and accused apprehended on spot - Medical report indicated tenderness and injuries confirming assault - Defence plea of false implication rejected as victim identified accused and corroboration existed from eyewitnesses - Trial court's findings based on consistent and reliable evidence - Appellate court held that absence of semen or genital injuries does not negate offence when corroborative facts prove sexual assault - Conviction and sentence upheld - Appeal Dismissed [*M Ajith vs. State* (MADRAS HIGH COURT) 2026(1)PRC107]

BAIL IN KIDNAPPING CASE

Bail in Kidnapping Case - Petitioners sought regular bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita corresponding to Section 439 CrPC - Allegations involved kidnapping, confinement and ransom of large sum - Petitioners contended

false implication due to family disputes and absence of direct role - Prosecution asserted serious nature of offences involving armed kidnapping and extortion - Both petitioners in custody for long period with limited progress in trial - Court considered gravity of charges, role of petitioners and material evidence - Held that offences involved organized kidnapping and extortion with use of weapons and ransom demand - Custodial period alone not ground for release where allegations grave and supported by material - Bail declined - Petitions Dismissed [*Arun Baniwal @ Arun @ Jagira; Ankit Giri vs. State of Haryana* (PUNJAB AND HARYANA HIGH COURT) 2026(1)PRC81]

BAIL IN POCSO CASE

Bail in POCSO Case - Petition for regular bail under Bharatiya Nyaya Sanhita and POCSO Act alleging rape of minor - Petitioner aged twenty-three in custody since May - Complaint and FIR delayed, medical report showed no injury or proof of assault - Parties had long-standing enmity and counter case pending - Court found continued custody unnecessary post charge sheet - Held that right to liberty under Article 21 must be protected through conditional release - Bail granted with restrictions on travel and contact with victim - Bail granted - Petition Allowed [*Shashidhara S/o Yallappa vs. State of Karnataka; Balappa S/o Basappa Kuri* (KARNATAKA HIGH COURT) 2026(1)PRC23]

BAIL REJECTION

Bail Rejection - Petitions filed under Bharatiya Nagarik Suraksha Sanhita Sec. 483 by accused seeking bail for offences under Bharatiya Nyaya Sanhita Secs. 61(2), 140(2), 115(2), 118, 70(1), 74, 238, 127(3), 319(2), 352, 351(2), 308(2), 329(4) - Petitioners contended that charge sheet filed, custodial interrogation not needed and others similarly placed got bail - Respondent contended that accused are rowdy sheeters with serious overt acts of kidnapping, harassment and criminal antecedents - Materials indicated heinous acts of physical torture to victims - Accused Nos.1,2,4 and 6 found with grave role and criminal background - Accused No.3 being a woman with no antecedents granted bail with conditions - Bail denied to others - Petitions partly allowed [*Srinivas C @ Pagal Seena S/o Chaluvaraju; Joseph S/o Michal; Syed Shabuddin S/o Nasir Ahammad; Soumya D/o Dodda Thimmaiah; Manoj R @ Tale S/o Ramakrishna vs. State By Chandra Layout Police Station, Bengaluru; Manjula C W/o Lankesh* (KARNATAKA HIGH COURT) 2026(1)PRC65]

BAIL UNDER POCSO ACT

Bail Under POCSO Act - Petitioners charged under IPC and POCSO Act for gang rape of minor girl - Contended delay in trial entitled them to bail and questioned court jurisdiction - Court held Principal Sessions Judges designated as Special Courts under POCSO and delay does not confer automatic right to bail - Provisions for speedy trial benefit victim not accused - Victim's and sister's testimonies supported prosecution case - No evidence rebutting statutory presumptions under Sections 29 and 30 of

POCSO Act - Gravity of offence and age difference emphasized - Bail denied - Bail Application Dismissed [*Yasir Amin Khanday and Another vs. UT of J&k* (JAMMU AND KASHMIR HIGH COURT) 2026(1)PRC74]

COMPENSATION ENTITLEMENT

Compensation Entitlement - Petitioner sought direction for payment of balance relief amount under SC/ST Act and Rules claiming she was entitled to full compensation as victim of gang rape - Authorities had earlier transferred partial amount - On examination it appeared that petitioner had turned hostile during trial leading to acquittal of accused and no confirmatory medical report was produced - Court held that compensation under Rule 12 of SC/ST Rules is meant for victims who support prosecution and assist in justice process - Once petitioner turned hostile and acquittal followed she ceased to be a "victim of atrocity" under law - Hence she could not claim further compensation and any received amount was liable to be recovered by State - Petition Dismissed [*Victim X vs. State of Madhya Pradesh and Others* (MADHYA PRADESH HIGH COURT) 2026(1)PRC26]

CONSENSUAL RELATIONSHIP

Consensual Relationship - Accused sought quashing of rape and deception charges arising from long-term relationship with widow who alleged promise of marriage - Relationship continued for years even before death of complainant's husband and after accused's subsequent marriage - It was found that sexual relations were consensual and not induced by false promise - Complaint under Sections 493 and 496 unsustainable without private complaint as per Section 198 CrPC - Promise of marriage cannot constitute misconception of fact under Section 90 unless made deceitfully without intent to marry - Facts showed mutual affection not deception - Continuation of relations after knowing accused's marriage confirmed consent - Criminal proceedings quashed - Allegations failed to make out offences under Sections 376, 493, 496 IPC - Petition Allowed [*Pradeep S/o Wilson vs. Station House Officer; Xxxxxxxx (Victim)* (KERALA HIGH COURT) 2026(1)PRC91]

ILLEGAL DETENTION

Illegal Detention - Petitioner filed Habeas Corpus petition alleging unlawful detention of his brother for offences under IPC and POCSO Act - Allegation made that arresting officer did not follow procedure and that multiple bail applications had been rejected resulting in prolonged incarceration - It was urged that such continued custody violated fundamental rights guaranteed under Articles 21 and 22 of Constitution - State submitted that detention followed due process and hence Habeas Corpus not maintainable - Division Bench examined earlier coordinate Bench decision where release was ordered despite judicial custody and disagreed with that view - It held that detention pursuant to judicial order after due process cannot be termed illegal for purpose of Habeas Corpus - Petition seeking writ of Habeas Corpus therefore found not maintainable - Petition Dismissed [*Ram Nivas vs. State of M P and Others*]

(MADHYA PRADESH HIGH COURT) 2026(1)PRC86]

POCSO BAIL

POCSO Bail - Joint bail petitions by accused facing trial under POCSO Act and BNS for sexual assault on minor - Victim recovered and her statement recorded alleging repeated assault by several persons - Petitioners contended that victim and parents retracted statements during trial and most evidence is corroborative - Prosecution opposed citing gravity and incomplete trial - Court held successive bail applications maintainable before High Court but observed serious nature of charges and ongoing trial with major witnesses yet to be examined - Found no change in circumstances since earlier rejection - Bail declined - Bail Rejected [*Basharat Ahmad Shora & Ors vs. Ut of J&k* (JAMMU AND KASHMIR HIGH COURT) 2026(1)PRC57]

QUASHING REQUEST

Quashing Request - Appeal filed seeking quashing of FIR under penal provisions alleging non-consensual physical relations - Facts indicate parties met during pendency of matrimonial proceedings and thereafter maintained close contact leading to long continuing intimate relationship - FIR lodged after considerable delay and after refusal to meet monetary demand - Record indicates complainant voluntarily met appellant on multiple occasions and maintained relationship despite initial refusal for marriage - Allegations do not indicate coercion fraud or inducement leading to vitiation of consent - Material on record indicates consensual associations over extended period and absence of deceit or false assurance traceable to initial stage - Matter does not disclose ingredients of penal provisions attracted in FIR - Continuation of prosecution held unwarranted and contrary to settled parameters for exercise of quashing jurisdiction - Impugned order set aside and FIR along with charge sheet quashed - Appeal Allowed [*Samadhan S/o Sitatram Manmothe vs. State of Maharashtra & Another* (SUPREME COURT OF INDIA) 2026(1)PRC3]

RAPE CONVICTION APPEAL

Rape Conviction Appeal - Appeal against conviction under Sec. 376(1) IPC and Sec. 4 POCSO Act - Victim alleged abduction and sexual assault - Multiple witnesses gave inconsistent versions on place and sequence - Medical evidence found no proof of sexual assault - Victim known to accused and relationship indicated consensual contact - Court found evidence contradictory and uncorroborated - Held that prosecution failed to prove guilt beyond reasonable doubt - Conviction set aside - Appellant acquitted. - Appeal Allowed [*Robiyal Ali @ Robial Sheikh S/o Late Nuchar Ali Sheikh @ Nuchruddin Sheikh vs. State of Assam and Anr; Dilbar Sheikh @ Dilabar S/o Late Mongla Sheikh* (GAUHATI HIGH COURT) 2026(1)PRC19]

SENTENCE MODIFICATION

Sentence Modification - Appeal against conviction under Section 376(3) IPC and Section 6 POCSO Act - Appellant sought reduction of sentence while not disputing conviction - Court noted gravity of offence but considered appellant's age, absence of

prior criminal record and good conduct in custody - Held sentence of life imprisonment till natural death excessive - Modified to fixed term of twenty-five years actual imprisonment without remission - Conviction Maintained and Appeal Partly Allowed - Sentence Reduced [*Deepankar Tikedar vs. State of Chhatisgarh* (SUPREME COURT OF INDIA) 2026(1)PRC1]

SENTENCE SUSPENSION

Sentence Suspension - Application filed for suspension of sentence after conviction for rape of mentally challenged woman - Appellant aged sixty years undergoing ten-year sentence - Court observed lack of medical proof of victim's mental condition - Victim's testimony weak and not fully corroborated - Evidence disclosed arguable case - Appeal unlikely to be heard soon - Considering age and period of incarceration, sentence suspended till appeal disposal subject to bail bond - Sentence Suspended [*Shivaji Asaram Kadam vs. State of Maharashtra and Another* (BOMBAY HIGH COURT) 2026(1)PRC31]

SEXUAL ASSAULT

Sexual Assault - Appeal filed against conviction for offence under POCSO Act - Appellant contended false implication due to property conflict - Defence argued contradictions in victim's statement and absence of medical support - Medical report indicated penetration consistent with assault - Witnesses including victim's mother, aunt and neighbours corroborated incident - Minor contradictions held not fatal - Evidence consistent that appellant enticed minor and committed assault - Prosecution proved guilt beyond reasonable doubt - Presumption under Sec. 29 not rebutted - Conviction and sentence upheld - Appeal Dismissed [*Satish Barman vs. State of West Bengal & Anr* (CALCUTTA HIGH COURT) 2026(1)PRC39]

SEXUAL ASSAULT ON MINOR

Sexual Assault On Minor - Appeal filed against conviction under POCSO Act - Allegation that accused molested minor aged four years inside complainant's house - Evidence of mother consistent and supported by father - Medical report showing redness in private part though no external injury - Court held absence of injuries not fatal when ocular evidence credible - Statement of victim recorded and corroborated circumstances of occurrence - Conduct of accused and immediate reporting confirmed guilt - Medical evidence corroborative and not contradictory - Findings of lower courts based on cogent material - Conviction and sentence upheld - Appeal Dismissed [*Dinesh Kumar Jaldhari vs. State of Chhattisgarh* (SUPREME COURT OF INDIA) 2026(1)PRC14]

SEXUAL ASSAULT ON MINOR

Sexual Assault on Minor - Appeal against conviction under IPC and POCSO Act - Victim alleged repeated sexual assault by stepfather and threats to mother - Medical report showed torn hymen but no fresh injury - Mother and teacher turned hostile during trial - Court held that testimony of child witness partly inconsistent but credible

portions can be relied upon - Evidence of hostile witnesses examined carefully and corroborated by medical and circumstantial material - Court found conviction justified though sentence modified considering contradictions - Benefit of doubt not available - Appeal Dismissed [*V vs. State* (DELHI HIGH COURT) 2026(1)PRC49]

SEXUAL ASSAULT ON MINOR

Sexual Assault on Minor - Appeal against conviction under Sec. 354 IPC and Sec. 10 POCSO Act - Victim aged five years deposed offender called her on pretext of fruit, removed her clothes and touched private parts - Testimony consistent with mother and sister and corroborated by prompt report - Medical evidence confirmed absence of penetration but supported incident - Defence of false implication rejected - Court upheld finding of guilt and sentence imposed by trial court - Appeal dismissed [*Kalim Attarli Shaikh vs. State of Maharashtra; X Y Z* (BOMBAY HIGH COURT) 2026(1)PRC97]

SEXUAL ASSAULT ON MINOR DAUGHTERS

Sexual Assault on Minor Daughters - Accused married twice and lived with second wife and children - Accused habitually consumed alcohol and subjected his family to harassment - During separation of spouses, two minor daughters stayed with accused - Accused sexually assaulted both daughters repeatedly and threatened them with dire consequences - Complaint given by welfare officer led to registration of case and medical examination of victims confirmed sexual assault - Trial Court convicted accused under provisions of POCSO Act - Defence argued delay in complaint and false implication due to strained relations - Court held delay properly explained and evidence of victims corroborated by medical records - Conviction and sentence of life imprisonment confirmed - Judgment upheld - Conviction sustained - Sentence confirmed - Appeal Dismissed [*Sarvanan vs. State* (MADRAS HIGH COURT) 2026(1)PRC122]

SUSPENSION REVIEW VALIDITY

Suspension Review Validity - Petition filed seeking quashing of suspension order and reinstatement - Contention that review not held within ninety days under Rule 10(7) of CCS (CCA) Rules - Petitioner arrested in criminal case under IPC and POCSO Act - Released on bail and intimation received later by department - Review committee constituted within ninety days from date of intimation - Held that period of ninety days to be computed from date authority receives intimation of release - Review conducted within permissible time - Suspension validly extended - No illegality found in review or extension - Petition Dismissed [*Bulang Marik vs. State of Ap and Ors; Commissioner of Home; Deputy Secretary (Home); Under Secretary (Home); Director General of Police; Commandant* (GAUHATI HIGH COURT) 2026(1)PRC67]

ALL INDIA POCSO AND RAPE CASES

2026(1)PRC1

IN THE SUPREME COURT OF INDIA

[From CHHATTISGARH HIGH COURT]

(Hon'ble Judge Rajesh Bindal; Manmohan)

Criminal Appeal No. 5028 of 2025 **dated 25/11/2025**

Deepankar Tikedar

Versus

State of Chhatisgarh

SENTENCE MODIFICATION

Indian Penal Code, 1860 Sec. 375, Sec. 376 - Protection of Children from Sexual Offences Act, 2012 Sec. 6 - Sentence Modification - Appeal against conviction under Section 376(3) IPC and Section 6 POCSO Act - Appellant sought reduction of sentence while not disputing conviction - Court noted gravity of offence but considered appellant's age, absence of prior criminal record and good conduct in custody - Held sentence of life imprisonment till natural death excessive - Modified to fixed term of twenty-five years actual imprisonment without remission - Conviction Maintained and Appeal Partly Allowed - Sentence Reduced

Law Point: Courts can modify life imprisonment to fixed term sentence considering mitigating factors such as youth, absence of criminal history and conduct in custody-Judicial discretion permits balancing punishment with proportionality and reformation principles

Acts Referred:

Indian Penal Code, 1860 Sec. 375, Sec. 376

Protection of Children from Sexual Offences Act, 2012 Sec. 6

Counsel:

Rajeev Kumar Bansal, Tanvi Nigam, Shefali Jain, Rajat Kumar, Dipesh Kumar, Manish Das, Mahendra Kumar Jain, Abhishek Pandey, Prashant Kumar Umrao

JUDGEMENT

Rajesh Bindal, J. [1] Leave granted.

[2] In the present appeal, the judgment of the High Court [High Court of Chhattisgarh at Bilaspur] in CRA No. 1916 of 2023 dated 25.09.2024, has been impugned, whereby conviction of the appellant under Section 376(3) of the Indian Penal Code, 1872 [Hereinafter, "IPC"] and Section 6 of the Protection of Children from Sexual

Offences Act, 2012 [Hereinafter, "POCSO Act"] was upheld. Sentence of life imprisonment until natural death, as awarded by the Trial Court, was also upheld.

[3] The brief facts of the case are that FIR No. 08/2022 dated 04.05.2022 was registered against the appellant for the offences committed under Section 375 of the IPC and Section 6 of the POCSO Act. After trial, the appellant was convicted under Section 376(3) of the IPC and Section 6 of the POCSO Act and sentenced to life imprisonment until natural death by the Trial Court in Special Sessions (POCSO) Case No. 29/2022 vide judgement dated 13.07.2023. In appeal before the High Court, [Criminal Appeal (CRA) No. 1916 of 2023] the judgment of conviction and order of sentence were upheld.

[4] Learned Counsel for the appellant submitted that he does not wish to contest the conviction of the appellant. However, in the light of facts and circumstances, indulgence is sought from this Court for awarding a limited period sentence instead of life imprisonment till natural death. He further submitted that the appellant has no other criminal antecedents and his conduct in the jail has been satisfactory as there have been no complaints against him during his period of custody.

[5] On the other hand, learned Counsel for the State submitted that it is a case in which the appellant has spoiled the life of a minor girl who was merely 15 to 16 years of age at the time when the offence was committed. Considering the aforesaid fact, the appellant does not deserve to be granted any leniency by this Court.

[6] Heard learned Counsel for the parties and perused the relevant records.

[7] It is not in dispute that the appellant herein has been convicted under Section 376(3) of the IPC and Section 6 of the POCSO Act and sentenced to undergo life imprisonment till natural death. The offence is also grievous. However, considering the age of the appellant and also that there are no antecedents and further his conduct during custody has been satisfactory, the sentence of life imprisonment till natural death can be converted to limited period. We hereby reduce the sentence awarded to the appellant to a fixed term of 25 years actual imprisonment without remission. This court can exercise such a power in view of law laid down in **Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka**.

[8] For the reasons mentioned above, the criminal appeal is partially allowed. The impugned order passed by the High Court is modified to the extent mentioned above.

[9] Pending application also stands disposed of

2026(1)PRC3

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge B V Nagarathna; R Mahadevan)

Criminal Appeal No 5001 of 2025 dated 24/11/2025

Samadhan S/o Sitatram Manmothe

Versus

State of Maharashtra & Another

QUASHING REQUEST

Indian Penal Code Sec. 507 Sec. 376 Sec. 376 - Contract Act Sec. 19 - Bharatiya Nagarik Suraksha Sanhita Sec. 528 - Quashing Request - Appeal filed seeking quashing of FIR under penal provisions alleging non-consensual physical relations - Facts indicate parties met during pendency of matrimonial proceedings and thereafter maintained close contact leading to long continuing intimate relationship - FIR lodged after considerable delay and after refusal to meet monetary demand - Record indicates complainant voluntarily met appellant on multiple occasions and maintained relationship despite initial refusal for marriage - Allegations do not indicate coercion fraud or inducement leading to vitiation of consent - Material on record indicates consensual associations over extended period and absence of deceit or false assurance traceable to initial stage - Matter does not disclose ingredients of penal provisions attracted in FIR - Continuation of prosecution held unwarranted and contrary to settled parameters for exercise of quashing jurisdiction - Impugned order set aside and FIR along with charge sheet quashed - Appeal Allowed

Law Point: When material indicates voluntary long-term intimate relationship without coercion or inducement and absence of false promise traceable to inception, penal provisions concerning sexual offences cannot be invoked and continuation of prosecution amounts to abuse of process

Acts Referred:

Indian Penal Code, 1860 Sec. 507, Sec. 376, Sec. 376

Contract Act, 1872 Sec. 19

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

Counsel:

Sneha Sanjay Botwe, Bharat S Doifode, Siddharth S Chapalgaonkar, Akash Tripathi, Ashraf Patel, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Shrirang B Varma, Bharat Bagla, Sourav Singh, Aditya Krishna, Adarsh Dubey, Chitransha Singh Sikarwar, Radhika Gautam

JUDGEMENT

Nagarathna, J.- [1] Leave granted.

[2] Being aggrieved by the order dated 06.03.2025 passed by the Bombay High Court at Aurangabad in Criminal Application No. 601 of 2025 dismissing the application filed by the appellant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") seeking quashing of FIR No. 294 of 2024, registered with City Chowk Police Station, District Chhatrapati Sambhajnagar City on 31.08.2024, for the offences punishable under Sections 376, 376(2)(n) and 507 of the Indian Penal Code, 1860 (for short "IPC"), the appellant is before this Court.

[3] We have heard learned counsel for the appellant, learned counsel for respondent No.1-State and learned Amicus Curiae, Ms. Radhika Gautham, for respondent No.2 as the latter has not responded to the notice issued and served on her.

[4] Briefly stated the facts of this case as per the prosecution are that respondent No.2 had lodged a complaint with City Chowk Police Station, District Chhatrapati Sambhajnagar City, stating that she was married to a person ABC in the year 2019 and had a minor daughter out of the said wedlock. However, due to matrimonial discord with her husband and in-laws, she had been residing separately since May 2020 and was living with her parents at Rajangaon, Taluka Paithan, District Chhatrapati Sambhajnagar.

[5] In July 2020, respondent No.2 had filed a complaint against her husband at the Women's Grievance Redressal Centre, Office of Superintendent of Police, Chatrapati Sambhajnagar. However, owing to the failure of reconciliation between them, respondent No.2 initiated proceedings against her husband seeking alimony/maintenance from him.

[6] It is in connection with the said proceedings that respondent No.2, on 27.01.2022, was introduced to the appellant, who is a practising advocate in the courts of Aurangabad. Later, appellant took respondent No.2's contact number and the two regularly kept in touch on WhatsApp and through phone calls. Over a period of time, the appellant and respondent No.2 developed a close relationship. It was then that the appellant proposed to meet respondent No.2 in person at Vivekananda Garden in TV Centre. During the course of their meeting, the appellant expressed his desire to marry respondent No.2. However, owing to her troubled marital past, respondent No.2 declined the proposal. Despite her reluctance, the appellant continued to insist on marriage at each subsequent meeting.

[7] On 12.03.2022, the appellant called respondent No.2 to Hotel Citizen, near Mill Corner, Chhatrapati Sambhajnagar, where he once again expressed his desire to marry her and assured her that he would marry her despite her concern that his mother might not approve of the alliance. Based on such assurance, the appellant established physical relations with her.

[8] Subsequently, in September 2022, the complainant discovered that she was pregnant with the appellant's child. However, with the consent of the appellant, she aborted the child. Thereafter, when respondent No.2 decided to part ways with the appellant, he continued to assure her of marriage and engaged in further sexual relations with her, as a result of which she got pregnant again in July 2023 and later in May 2024. Both the pregnancies were terminated.

[9] On 20.05.2024, the appellant once again called respondent No.2 to Hotel Citizen, where he engaged in physical acts with her. Later, when respondent No.2 insisted on marriage, the appellant flatly refused to marry her and further threatened to kill her if she disclosed the matter to anybody.

[10] Based on the aforesaid facts, FIR No. 294 of 2024 dated 31.08.2024 came to be registered against the appellant for the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC at City Chowk Police Station, District Chhatrapati Sambhajnagar City.

[11] Being aggrieved, the appellant filed an anticipatory bail application bearing Criminal Bail Application No. 1841 of 2024 before the Additional Sessions Judge, Aurangabad (hereinafter referred to as "Trial Court"). The Trial Court, by order dated 19.09.2024, allowed the application and enlarged the appellant on anticipatory bail. During the course of the investigation, both respondent No. 2 and her mother, in their statements, supported the prosecution's version of events. Subsequently, on completion of the investigation, a charge-sheet bearing No. 143 of 2024 dated 25.10.2024 came to be filed against the appellant under Sections 376, 376(2)(n) and 507 of the IPC.

[12] Being aggrieved, the appellant preferred an application bearing Criminal Application No. 601 of 2025 before the Bombay High Court at Aurangabad under Section 528 of the BNSS, seeking quashing of FIR No. 294 of 2024.

[13] By the impugned order dated 06.03.2025, the High Court refused to quash the criminal proceedings pending against the appellant in FIR No. 294 of 2024 on the ground that a chargesheet had already been filed and the matter was ready for trial; the appellant could not sufficiently prove that the instant case was a clearly case of consensual relationship; that the relationship between the appellant and respondent No.2 could be termed as a fiduciary relationship inasmuch as the appellant was discussing the maintenance case of respondent No.2 with her; and that in view of the aforesaid, the facts of the present case warranted the conduct of a trial to test the veracity of the allegations made by respondent No.2 and to ascertain whether the acts alleged to have occurred between the appellant and respondent No.2 were against her will or otherwise.

[14] We have heard learned counsel for the appellant and learned counsel for the respondent-State and learned Amicus on behalf of respondent No.2.

[15] Learned counsel appearing for the appellant submitted that the appellant has been falsely implicated as there is no evidence against him with respect to the

commission of the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC.

[16] It is further submitted that the respondent No.2 is a well educated lady who is married and has a minor daughter. It was contended that there is no divorce decree passed between respondent No.2 and her husband. Therefore, during the subsistence of her marriage, respondent no.2 consequently entered into a relationship with the appellant for a period of three years. Further, during the subsistence of their relationship, no complaint whatsoever was ever lodged by respondent No.2 against the appellant. It was only in August 2024 after the appellant refused to pay a sum of Rs.1,50,000/- demanded by respondent No.2, that in a fit of anger, she lodged the present criminal case against him.

[17] Learned counsel for the respondent-State, on the other hand, supported the impugned order and submitted that the allegations made by respondent No.2 discloses commission of a cognisable offence and warrants no interference at the threshold. It is submitted that the veracity of the defence taken by the appellant is a matter for trial and not for adjudication under the limited jurisdiction of a petition for quashing.

[18] Learned Amicus also supported the respondent-State by contending that there is no merit in this appeal.

[19] Having heard the learned counsel appearing for the parties and having perused the material on record, the only question that needs to be addressed is whether FIR No. 294 of 2024 dated 31.08.2024, along with Chargesheet No.143 of 2024 filed on 25.10.2024 against the appellant herein, should be quashed.

[20] In the instant case the allegations in the FIR are under Sections 376, 376(2)(n) and 507 of the IPC. An offence of rape, if established in terms of Section 375 of the IPC, is punishable under Section 376 of the IPC. In the present case, the second description of Section 376 is relevant which is set out below:

"376. Punishment for rape. (1). Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever, -

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(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation. For the purposes of this sub-section,

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force,

including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."

[21] Section 376(2)(n) of the IPC provides for enhanced punishment in cases where rape is committed repeatedly on the same woman. It mandates rigorous imprisonment for a term of not less than ten years which may extend to life imprisonment for the remainder of the person's natural life. The object of this provision is to address aggravated instances of sexual assault where the offence is not a single incident but has occurred repeatedly on the same victim. The expression "repeatedly" employed in the provision is of significance. It contemplates more than one act of sexual assault, committed at different points in time on the same victim. Courts have consistently interpreted this phrase to mean a series of acts that are separate in nature and not a continuation of a single transaction.

[22] In genuine cases under Section 376(2)(n) of the IPC, the pattern is usually unmistakable; it is an initial act of sexual assault, followed by multiple acts under fear, pressure, captivity, or continued deceit, often when the woman is rendered vulnerable and unable to escape the situation.

[23] In the present case, a bare perusal of the FIR and the statement on record reveals that respondent No.2 met the appellant, who is a practising advocate, for the first time in reference to a case which was instituted by respondent No.2 against her husband. Thereafter, they exchanged numbers and regularly kept in touch. Over a passage of time, respondent No.2 and the appellant developed a close relationship and started meeting each other frequently. During this time, they established sexual relations multiple times between 12.03.2022 to 20.05.2024. The appellant contends that during the course of their relationship, not once did respondent No.2 file a complaint regarding the alleged non-consensual sexual relations, and it is inconceivable that the appellant would force himself upon her for so many years without there being any protest or complaint from the side of respondent No.2. Notably, it was only in August of 2024 when the appellant refused to fulfil respondent No.2's demand of payment of Rs.1,50,000/- that the instant criminal case came to be instituted against the appellant.

[24] Another question which arises for consideration is whether the appellant engaged in physical relationship with respondent No.2 based on a deception or a false promise to marry.

[25] The allegation of rape in the present case hinges entirely on respondent No.2's claim that appellant established physical relations with her on false pretext of marriage. It is alleged by the appellant that respondent No.2 opposed the idea of marriage whenever the appellant broached the said idea; however, the appellant kept on insisting possibly this was because her first marriage was in subsistence. It is, however, not clear as to why, despite being opposed to the idea of marriage, respondent No.2 continued to meet the appellant and indulged in physical relations with him even though she was already married.

[26] The FIR in the present case also states that in September 2022, when respondent No.2 found out that she was pregnant with the appellant's child, she told the appellant, "You live your life and I will live my life". At that time, the appellant again assured her that they would get married and asked for some time from respondent No.2, to which she refused. However, despite her refusal to be with the appellant, respondent No.2 continued to meet him at Hotel Citizen and engaged in physical relations with him.

[27] In this regard, it becomes relevant to refer to the decision of this Court in the case of **Mahesh Damu Khare vs. State of Maharashtra**, 2024 11 SCC 398, ("Mahesh Damu") wherein the following observations were made:

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

(underlining by us)

[28] We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

[29] This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

[30] In **Prashant vs. State of NCT of Delhi**, 2025 5 SCC 764, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The relevant portion is extracted as under:

"20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

(underlining by us)

[31] This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest

the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

[32] Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate that it is a classic instance of a consensual relationship having subsequently turned acrimonious.

[33] The appellant has unequivocally asserted that, during the subsistence of the relationship, no grievance or allegation was ever raised by respondent No.2 regarding the absence of consent in their physical relations. It was only upon the appellant's refusal to fulfil her demand for payment of the sum of Rs.1,50,000/- that the present criminal proceedings came to be instituted. Furthermore, the alleged incidents are stated to have occurred between 12.03.2022 and 20.05.2024; however, the FIR was lodged only on 31.08.2024, i.e. nearly three months after the last alleged act of sexual intimacy.

[34] The FIR is conspicuously silent as to any specific allegation that the appellant had either forcibly taken or compelled respondent No.2 to accompany him to the hotel, nor does it disclose any circumstance suggesting deceit or inducement on the part of the appellant to procure her presence there. Therefore, the only logical inference that emerges is that respondent No.2, of her own volition, visited and met the appellant on each occasion. It is also borne out from the record that whenever the appellant brought up the subject of marriage, respondent No.2 herself opposed the proposal. In such circumstances, the contention of respondent No.2 that the physical relationship between the parties was premised upon any assurance of marriage by the appellant is devoid of merit and stands unsustainable.

[35] We deem it appropriate to refer to the decision of this Court in **Rajnish Singh vs. State of Uttar Pradesh**, 2025 4 SCC 197, whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

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39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

(underlining by us)

[36] By the impugned order dated 06.03.2025, the High Court observed that although it was contended on behalf of the appellant that the relationship between him and respondent No. 2 was consensual in nature, no such categorical statement was made by him in the memo of application and that the plea of consent was merely inferred. In this regard, reliance was placed by the High Court on the case of **Ganga Singh vs. State of Madhya Pradesh**, 2013 7 SCC 278, wherein this Court had stated that unless there was a specific defence of a consensual relationship, such a defence cannot be inferred.

[37] The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No.2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition. It is also pertinent to note that, at the relevant time, the marriage of respondent No.2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.

[38] At this stage it is material to refer to the decision of this Court in **Mahesh Damu**, wherein the following observations were made:

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to **Deepak Gulati v. State of Haryana** [Deepak Gulati v. State of Haryana, 2013 7 SCC 675: (2013) 3 SCC (Cri) 660] , in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(underlining by us)

[39] In **State of Haryana vs. Bhajan Lal**, 1992 Supp1 SCC 335, this Court formulated the parameters in terms of which the powers under Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the BNSS) could be exercised. While it is not necessary to revisit all these parameters, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

"102. xxx

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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[40] In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No.2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.

[41] We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 06.03.2025 in application under Section 528 BNSS bearing Criminal Application No. 601 of 2025. The said application accordingly stands allowed. Consequently, FIR No. 294 of 2024 dated 31.08.2024, registered with City Chowk Police Station, District Chhatrapati Sambhajnagar City under Sections 376, 376(2)(n) and 507 of the IPC and Chargesheet No. 143 of 2024 dated 25.10.2024, filed in the Court of the 3rd Judicial Magistrate First Class, Aurangabad, accordingly stands quashed.

[42] We express our sincere appreciation of the services rendered by Ms. Radhika Gowtam, learned Advocate-on-Record who had been appointed as Amicus Curiae in the matter. Registry of this Court is directed to pay honorarium of Rs.15,000/- (Rupees Fifteen Thousand only) to the learned Amicus Curiae

2026(1)PRC14

IN THE SUPREME COURT OF INDIA

[From CHHATTISGARH HIGH COURT]

(Hon'ble Judge Aravind Kumar; N V Anjaria)

Criminal Appeal No 4732 of 2025 **dated 13/11/2025***Dinesh Kumar Jaldhari***Versus***State of Chhattisgarh***SEXUAL ASSAULT ON MINOR**

Indian Penal Code, 1860 Sec. 376, Sec. 376AB - Code of Criminal Procedure, 1973 Sec. 164 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 9, Sec. 10, Sec. 7, Sec. 5, Sec. 8 - Sexual Assault On Minor - Appeal filed against conviction under POCSO Act - Allegation that accused molested minor aged four years inside complainant's house - Evidence of mother consistent and supported by father - Medical report showing redness in private part though no external injury - Court held absence of injuries not fatal when ocular evidence credible - Statement of victim recorded and corroborated circumstances of occurrence - Conduct of accused and immediate reporting confirmed guilt - Medical evidence corroborative and not contradictory - Findings of lower courts based on cogent material - Conviction and sentence upheld - Appeal Dismissed

Law Point: Conviction under POCSO Act can be sustained solely on credible ocular evidence even if medical report does not show injury-Minor inconsistencies or absence of corroborative injuries do not dilute trustworthy testimony of victim and her guardian.

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 376AB

Code of Criminal Procedure, 1973 Sec. 164

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 9, Sec. 10, Sec. 7, Sec. 5, Sec. 8

Counsel:

Varnika Gupta, Jaspreet Gogia, Srishti Choudhary, Karanvir Gogia, Yuvraj Gogia, Shivangi Singhal, Indira M (Marla Batta), Ankita Sharma, Arjun D Singh, Ishika Neogi

JUDGEMENT

N.V. Anjaria, J.-[1] Heard learned Advocate Ms. Varnika Gupta for the Appellant and learned Advocate Ms. Ankita Sharma for the respondent who appeared through video conferencing.

[2] At the instance of appellant convict, the challenge in this present appeal is addressed to judgment and order dated 06.03.2025 of the High Court of Chhattisgarh in CRA No. 1348 of 2023.

Thereby the High Court dismissed the appeal before it and confirmed judgment and order dated 18.04.2023 of learned Special Judge (POCSO), Kunkuri, District Jashpur, Chhattisgarh in Special Case No. 17 of 2021.

2.1. Trial Court convicted the appellant under Section 9(m) and Section 10 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to seven years of rigorous imprisonment and further imposed a fine of Rs. 2,000/- and in default of payment of fine, to undergo further normal imprisonment for one year.

[3] Stated in nutshell, as the prosecution case goes, the incident of commission of crime took place on 15.08.2021. The mother of the victim reported that her husband returned home with one Virendra and appellant Dinesh Ram, after collecting the coal wood. It was around 4:30 p.m. when the mother of the victim went inside to give food to the appellant and at that time, she found that the appellant had wore only half short (Chadda) and was sitting near the legs of her minor daughter aged 4 years. On being questioned and confronted by the mother, the appellant fled away. The mother (PW-3) noticed that the clothing of her daughter had gone inappropriate, and that her daughter was crying in pain. The victim told her that she had pain in her private part. The mother found the private part of the daughter to be wet.

3.1. On the same day an FIR bearing Crime No. 52 of 2021 was registered with Duldula Police Station, Jashpur, Chhattisgarh by the mother of the victim Sukanti Bai (PW-3) against the appellant under Section 376, 376 AB of the Indian Penal Code, 1860 and under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). The victim was sent for medical examination and came to be examined by Dr. Priyanka Toppo (PW-6), her statement came to be recorded under Section 164 of the Code of Criminal Procedure, 1973 by the Judicial Magistrate. The appellant came to be arrested.

3.2. The birth certificate of the victim seized by the police reflected that the date of birth of the victim was 13.02.2017, establishing that the age of the victim was between 4 to 5 years. A chargesheet was filed in respect of the offences under IPC and under the POCSO Act as mentioned above. At the end of the trial the appellant was convicted and sentenced under the POCSO Act, which conviction and sentence, was confirmed by the High Court.

[4] On behalf of the appellant, assailing the impugned judgment and order convicting and sentencing the appellant, it was mainly contended that there were no

eyewitnesses to fortify the occurrence of incident and the narration of the incident by the mother (PW-3) of the victim was not supported by independent evidence. Nowhere there were any marks of any external injury on the victim, nor there was bleeding on her private part as per the Medical Officer (PW-6) evidence, submitted learned advocate for the appellant. It was next submitted that the redness in the vagina seen could happen by rubbing over the clothes by the victim or due to infection. It was therefore vehemently submitted that the appellant deserved benefit of doubt and should have been acquitted.

4.1. On the other hand, learned advocate for the State of Chhattisgarh supported the conviction and sentence, to submit that they were based on clear facts, cogent circumstances and reliable evidence.

[5] While examining the merits of conviction and sentence of the appellant, the material evidence may be usefully noticed which offers a detailed account of the incident. Father (PW-2) and mother (PW-3) of the victim were consistent. Their evidence offers a detailed account of the incident. Both PW-3 and PW-2 deposed that PW-2 with the appellant and his brother had gone to forest to take coal wood. They came back at 2 p.m. and had liquor at the house of PW-2 and PW-3. Thereafter, PW-3 gave food to Virendra. Dinesh was inside. After giving food, PW-3 and her husband PW-2 were sitting outside their house. Virendra came out after eating the food. The victim daughter aged 4 years was sleeping in the house.

5.1. It was further stated that at about 4:30 p.m. PW-3 went inside to give food to the appellant. At that time, she saw the appellant wearing half shorts, sitting near the legs of the minor daughter. When asked what he was doing there, the appellant stood up and ran away. According to PW-3, the underwear of her daughter was down till her knees, and the frock was pulled up to the chest. She also stated that she called her husband by ringing an alarm and immediately, her husband came out to catch hold the accused who was running away and, hit him near the courtyard with a stick twice, but the appellant managed to flee. The crying daughter when asked about what had happened, she told in rural language that she had pain in her private part. PW-3 stated that the appellant was from her colony and she knew him. There is no good reason not to disbelieve the details revealed and the narration given about the incident by PW-3 - mother of the victim.

5.2. It may be true that Dr. Priyanka Toppo (PW-6) did not find external injury marks on the victim's body and stated that there was no bleeding of any kind. According to Medical Officer Dr. Nitish Anand (PW-8), the appellant was capable of having an intercourse. It is well settled that the medical evidence will take a backseat and even if do not corroborate with the ocular evidence, where the ocular evidence is consistent and cogent, the later would be allowed to prevail. In the medical evidence in the instant case, the redness in the vagina of the victim was noticed. In any way the Court is inclined to hold that the account of the incident given by PW3 the mother inspires confidence and deserves to be accepted.

5.3. The victim was brought in the witness-box. In paragraph 18 of the judgment, the High Court has highlighted the sequence of events that took place in course of the evidence of the victim (PW-1). PW-1 was studying at Anganwadi. Upon being found that the PW-1 understood the questions and was capable of deposing, she was subjected to evidentiary examination.

5.4. The very account of the evidence recorded by the trial court forming part of the record is reproduced hereinbelow,

"1/ Witness was shown the Accused present in the Court, who was standing behind the curtains, after getting his mask removed as to whether she identifies that person, then Witness stated that yes, on asking about his name she stated nothing and started getting frightened and did not look at the Accused.

2/ On seeing the fright of the Victim, Accused was sent out of the Courtroom and Evidence was stopped for a while to make the Victim normal.

3/ After 15 Minutes, Victim was again enquired normally but she not give any answer and that is why this evidence is being stopped again for one hour.

Sd/-

16/11/2021

(Ajit Kumar Rajbhanu)

Special Judge Kunkuri..."

"Again (At 1:45)

4/ Victim was called again for evidence with her mother, Victim is not giving any answers and is crying and even after many efforts, she is not telling anything before this Court. Hence, Examination of the Witness is closed on this point.

Cross Examination by Mr. Bishnu Prasad Kuldeep, Counsel for the Accused.

5/ Nil.

Statement read over to the Witness

Accepted as Correct

Typed on my instructions

Sd/

Sd/

16/11/2021

16/11/2021

(Ajit Kumar Rajbhanu)

(Ajit Kumar Rajbhanu)

Special Judge Kunkuri

Special Judge Kunkuri"

5.5. It is manifest from the above that when the accused present in court removed his mask, the victim got frightened and did not even look at the accused. The victim was required to be sent out of the courtroom, and recording of the evidence was stopped. When the victim was found to be normal after some time, the recording of evidence though commenced had to be discontinued having regard to the mental status of the victim (PW-1). It is recorded as could be noticed, that at the time when the

victim was called again for tendering her evidence with her mother, she was crying and was not able to speak anything in the court as the victim PW-1 was frightened by the presence of the accused. Hence, her examination was closed.

5.6. The fact that the victim was in a frightened state upon seeing the accused is a pointer in itself. The whole sequence of events in course of recording of evidence of PW-1, was tale-telling. The shock related to the happening of the incident which continued with the victim post-incident made its statement in the trauma-filled behaviour of the victim who was a 4 year-old girl.

[6] Section 7 of the POCSO Act defines sexual assault and Section 8 is the punishment for the said offence, which is imprisonment of either description for a term to be not less than three years, and which may extend to five years, with fine. The offence of aggravated sexual assault is Section 9. The punishment for the aggravated sexual offence is provided in Section 10, which is the imprisonment for a term not to be less than 5 years, and the same may extend to 7 years and shall also be liable to pay the fine. In the present case the appellant is convicted under Section 9(m), the trial court and the High Court having concurrently found that that the appellant had committed sexual assault on a child below 12 years, which falls under Section 9 read with Section 10.

[7] The evidence highlighted above go to establish the commission of offence. The appreciation of evidence of the trial court and consideration thereof by the High Court could be said to be eminently legal and proper, warranting no interference by this Court.

[8] A vain attempt was made on behalf of the appellant to press the aspect that there was no suggestion of, much less evidence of penetration in the sexual assault by the appellant and therefore the conviction and sentence was not justified. The Court is not impressed with this submission, given the facts and evidence on record.

[9] The conviction of the appellant recorded by the trial court and affirmed by the High Court is resultantly upheld. At the same time, the sentence imposed on the appellant is of 7 years' rigorous imprisonment which is maximum sentence prescribed under Section 10 of the POCSO Act. The appellant has so far undergone imprisonment for about 4 years and 5 months. In the totality of the facts and circumstances, the Court is inclined to reduce the sentence requiring the appellant to undergo the rigorous imprisonment for 6 years, instead. The imposition of fine of Rs. 6000/- and the simple imprisonment of one year in default of payment of fine would stand.

[10] The judgment and order of the High Court is modified to above limited extent by substituting the sentence as above.

[11] The appeal is partly allowed to the said extent.

In view of the disposal of the appeal as above, all pending interlocutory applications would not survive and are accordingly disposed of

2026(1)PRC19

GAUHATI HIGH COURT

(Hon'ble Judge Parthivjyoti Saikia)

Crl A (Criminal Appeal); I A (Crl) (Interlocutory Application(Criminal)) No 250 of 2023; 598 of 2023 **dated 02/12/2025**

Robiyal Ali @ Robial Sheikh S/o Late Nuchar Ali Sheikh @ Nuchruddin Sheikh

Versus

State of Assam and Anr; Dilbar Sheikh @ Dilabar S/o Late Mongla Sheikh

RAPE CONVICTION APPEAL

Code of Criminal Procedure, 1973 Sec. 376, Sec. 164, Sec. 366, Sec. 374 - Protection of Children from Sexual Offences Act, 2012 Sec. 4 - Rape Conviction Appeal - Appeal against conviction under Sec. 376(1) IPC and Sec. 4 POCSO Act - Victim alleged abduction and sexual assault - Multiple witnesses gave inconsistent versions on place and sequence - Medical evidence found no proof of sexual assault - Victim known to accused and relationship indicated consensual contact - Court found evidence contradictory and uncorroborated - Held that prosecution failed to prove guilt beyond reasonable doubt - Conviction set aside - Appellant acquitted. - Appeal Allowed

Law Point: Inconsistencies between victim testimony and medical evidence create reasonable doubt; conviction for rape cannot sustain without clear, consistent and corroborated proof of non-consensual act

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 376, Sec. 164, Sec. 366, Sec. 374

Protection of Children from Sexual Offences Act, 2012 Sec. 4

Counsel:

N Uddin, M U Mahmud, S H Mahmud, L Parbin, B Chetia, D Bora, M Islam, S K Chhetry Sarfraz Nawaz, K K Das, S Nawaz

JUDGEMENT

Parthivjyoti Saikia, J.- [1] Heard Mr. M.U. Mahmud, learned counsel appearing for the appellant. Also heard Mr. K.K. Das, the learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Mr. S. Nawaz, learned counsel appearing for the Respondent No.2.

[2] This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order dated 15.06.2023 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.6(BGN) of 2022.

[3] On 24.11.2021, the informant Dilbar Sheikh (PW-2) had lodged a written FIR before police that on 23.11.2021 at about 7 P.M., while his daughter PW-1 was washing her feet by the side of the tubewell at his residence, the present appellant and one unknown person forcibly took her to the banks of the river Ghutoni and committed **rape** upon her. On the basis of the said FIR, police registered the Bongaigaon P.S. Case No.962/2021. The PW-1 i.e. the victim also gave a statement before a Magistrate under Section 164 CrPC. She stated before the Magistrate, inter alia, that the present appellant had assaulted her and also **raped** her. She also stated before the Magistrate that when she started to shout and raised a holler, the appellant ran away.

[4] After investigation, police filed the charge sheet against the present appellant alleging commission of offences under Sections 376(1) and 366 of the Indian Penal Code read with Section 4 of the POCSO Act.

[5] During the trial of the case, the prosecution side examined 9(nine) witnesses. The appellant did not examine any witness. Finally, the trial court convicted the appellant under Sections 376(1) and 366 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment of 10(ten) years and to pay fine of Rs. 25,000/- with default stipulations for each of the offences.

[6] I have gone through the evidence and the impugned judgement.

[7] Pw-1 is the victim of this case. She stated in her evidence that while she was washing her feet at the tubewell situated within her house, the appellant and another person forcibly gagged her mouth from behind and lifted her and took her to the banks of the river. There, the appellant removed her pants and inserted her penis into her vagina. He allegedly assaulted her also as she had refused to love him. The PW-1 further stated that after the appellant had left the place, she started to shout and some people arrived there after hearing her voice and all of them took her to the house of Akkabbar Ali (not examined in this case). She stated that from his house, her father i.e. the PW-2 brought her home.

[8] In her cross-examination, the PW-1 has stated that for two years, she did not appear in the final examination of her class because of COVID-19. She also stated that on the day of the incident at about 7 P.M., the appellant called her over phone but she did not receive his phone call. The remaining part of her cross-examination contains some suggestions and she denied all those suggestions.

[9] The PW-2 was not present in his house at the time of occurrence. Whatever he learnt about the incident was from his daughter. He stated that after the incident, somebody took her to the house of another villager and from there, he brought her home.

[10] In his cross-examination, he has stated that his daughter studied in Class-VIII with one year gap.

[11] The 3rd Prosecution witness is Miyar Uddin Sheikh (PW-3). He stated in his evidence that on the day of occurrence, while he was returning home after performing Namaz, he heard hue and cry amongst some young boys on the road. One of the

villagers was told him that the appellant had taken away PW-1 and left her on the road. According to this witness, when the villagers found the PW-1 crying on the road, they took to the house of Noor Hussain. PW-3 also went to the house of Noor Hussain and found the girl there. PW-3 noticed that the wearing apparels of the girl were torn. The girl reportedly told this witness that the appellant forcibly took her to the jute fields and committed **rape** upon her. According to PW-3, the girl reportedly told him that the appellant took the girl to the place of occurrence on a promise of marriage. PW-3 brought the victim girl to the house of the PW-2.

[12] In his cross-examination, PW-3 has reiterated that the PW-1 told him that the appellant took her away on a promise of marriage.

[13] The 4th prosecution witness is Mohibul Islam (PW-4). He is a hearsay witness. He has stated that after hearing about the incident, he went to the place of occurrence and saw that the wearing apparels of PW-1 were torn. She told this witness that the appellant and another person had brought her there and they committed **rape** upon her. According to the witness Mohibul, he along with other villagers took the girl to the house of Gofur and later on her parents took her away from there.

[14] In his cross-examination, the witness Mohibul has stated that he never stated before police that the present appellant had abducted the PW-1 while she was washing her feet at her residence nor did he state before police that the victim girl had ever told him that the appellant and another unknown person had committed **raped** upon her.

[15] The 5th prosecution witness is Bir Ali (PW-5). He has stated in his evidence that on the day of occurrence, he was sitting in the house of Jaharul and one unnamed boy informed him that the PW-1 was taken to Gofur's house. PW-5 along with PW-2 and some other persons went to the house of Gofur. PW-5 has stated that the PW-1 had told him that the present appellant and another person forcibly took her to the banks of river Ghutoni and **raped** her. The girl also told that she tried to detain the appellant but he managed to escape after giving her a good thrashing.

[16] The cross-examination portion of the evidence of PW-5 contains repetitions of whatever he has already stated in his examination-in-chief.

[17] The 6th prosecution witness is Abdul Kashem Sheikh (PW-6). He has stated that one day that a person called Rafikul had called him over phone and asked him to come to the house of PW-2. When this witness went to the house of PW-2, then only he came to know about the incident. This witness had informed the Officer-inCharge of Bidyapur Police Out Post over phone.

[18] The cross-examination portion of his evidence has nothing relevant to warrant a discussion.

[19] The 7th prosecution witness is Momin Ali (PW-7). He has stated in his evidence that one night, he along with some fellow villagers went to the house of Gofur and brought PW-1 home from there. The PW-1 told him that the appellant forcibly took her to the banks of river Ghutoni and committed **rape** upon her there.

[20] The cross-examination portion of the evidence of this witness has nothing relevant.

[21] The 8th prosecution witness (PW-8) is the police investigation officer and he spoke about the investigation.

[22] The 9th prosecution witness is the doctor (PW-9), who examined the victim girl at the time of investigation. She has stated in her evidence that after three days after the occurrence i.e. on 26.11.2021, she examined the victim girl and she has stated that no opinion could be given whether she was **raped** or not.

[23] The defence plea is total denial and the appellant did not examine any defence witnesses.

[24] After going through the prosecution evidence, it is clear that the victim girl knew the present appellant prior to the date of occurrence, because on the day of the occurrence, the appellant called her over phone.

[25] The victim has stated in her evidence that after the incident, she was taken to the house of Akkabbar Ali. The PW-3 has stated that the girl was taken to the house of Noor Hussain. On the other hand, the PW-5 has stated that the victim girl was present in the house of Gofur from where the girl was taken away by her father.

[26] Be that as it may, except the victim girl, there are no eye witnesses to the occurrence. The medical evidence failed to support the prosecution story.

[27] It is true that in a case of **rape**, there may not be any other witnesses except the victim. It is also true that in a case of **rape**, the value of medical evidence plays a little role. Even then, I will rely upon a judgment of the Supreme Court that was delivered in **Rajoo v. State of M.P.**, 2008 15 SCC 133, it is held as under:

"11. It cannot be lost sight of that **rape** causes the greatest distress and humiliation to the victim but at the same time a false allegation of **rape** can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

[28] In this case, there is evidence that the victim girl PW-1 tried to detain the appellant at the place of occurrence but he managed to escape from her clutches by assaulting her. In her statement under Section 164 of the CrPC, the victim girl simply told that the appellant committed **rape** upon her. But in her examination-in-chief, she has clearly stated that the appellant had inserted his penis into her vagina. It goes to show that the victim has tried to improve the prosecution case in her evidence. She had also stated that the appellant had fallen in love with her but she did not love him. Police did not seize her wearing apparels at the time of investigation. The investigating officer

in this case has stated in his cross-examination that the PW-1 has never stated before him that the appellant had inserted his penis into her vagina.

[29] From the aforesaid facts, this Court is of the opinion that there is a substantial doubt about the truthfulness of the prosecution case against the present appellant and the benefit of doubt must go to the appellant. For the aforesaid reasons, the appeal is allowed.

[30] The impugned judgment and order dated 15.06.2023 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.6(BGN) of 2022 is set aside. The appellant Robiyal Ali @ Robial Sheikh is acquitted from this case. If he is in custody now, he shall be set at liberty forthwith.

[31] The present appeal along with the connected IA(Crl.) stand disposed of accordingly.

Send back the LCR

2026(1)PRC23

IN THE HIGH COURT OF KARNATAKA

[From KALABURGI HIGH COURT]

(Hon'ble Judge Sachin Shankar Magadum)

Crl P (Criminal Petition) No 201433 of 2025 **dated 01/12/2025**

Shashidhara S/o Yallappa

Versus

State of Karnataka; Balappa S/o Basappa Kuri

BAIL IN POCSO CASE

Constitution of India Art. 21 - Protection of Children from Sexual Offences Act, 2012 Sec. 4 - Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 Sec. 3 - Bharatiya Nyaya Sanhita, 2023 Sec. 64, Sec. 74, Sec. 109, Sec. 115, Sec. 118, Sec. 126, Sec. 189, Sec. 190, Sec. 191, Sec. 329, Sec. 351, Sec. 352 - Bail in POCSO Case - Petition for regular bail under Bharatiya Nyaya Sanhita and POCSO Act alleging rape of minor - Petitioner aged twenty-three in custody since May - Complaint and FIR delayed, medical report showed no injury or proof of assault - Parties had long-standing enmity and counter case pending - Court found continued custody unnecessary post charge sheet - Held that right to liberty under Article 21 must be protected through conditional release - Bail granted with restrictions on travel and contact with victim - Bail granted - Petition Allowed

Law Point: Bail in POCSO offence may be granted when medical and factual evidence weak and charge sheet filed; prolonged detention violates Article 21-conditional bail safeguards both liberty and investigation

Acts Referred:

Constitution of India Art. 21

Protection of Children from Sexual Offences Act, 2012 Sec. 4

Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 Sec. 3

Bharatiya Nyaya Sanhita, 2023 Sec. 64, Sec. 74, Sec. 109, Sec. 115, Sec. 118, Sec. 126, Sec. 189, Sec. 190, Sec. 191, Sec. 329, Sec. 351, Sec. 352

Counsel:

Shivanand V Pattanshetti, Jamadar Shahabuddin, Pawan S Karwa, Annaraya M Patil

JUDGEMENT

Sachin Shankar Magadum, J.- [1] The captioned petition is filed by accused No.1 seeking grant of regular bail in Special Case No.5072/2025 arising out of Crime No.75/2025 registered for the offences punishable under Sections 189(2), 191(1), 115(1), 352, 351(2)(3), 64, 74, 126 read with Section 190 of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS, 2023') and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), pending on the file of III Additional District and Sessions Judge/Special Judge, Raichur sitting at Sindhanur.

[2] The gist of the prosecution case is that CW-1, the victim, is aged below 18 years. It is alleged that accused No.1 had been insisting that CW-1 submit to sexual intercourse and, upon her refusal, he forcibly took her to a land on 21.05.2025 and committed rape. It is further alleged that when the parents and relatives of the victim questioned the petitioner, he insulted CW-1 as well as CW-4, CW-6 and CW-7, and also issued threats to the first informant. On the basis of these allegations, a complaint came to be lodged, culminating in registration of the present crime. After completion of the investigation, the Investigating Officer has filed the charge sheet. The primary allegation against the petitioner is that he committed rape on CW-1.

[3] Learned counsel for the petitioner, adverting to the charge sheet materials, submits that the petitioner was arrested on 27.05.2025; he is barely 23 years of age and is in judicial custody. Attention of this Court is also drawn to the long-standing strained relationship between the petitioner's family and the second respondent's family. It is brought on record that the second respondent's family members have themselves been charge-sheeted for offences relating to outraging the modesty of the petitioner's mother, Dymavva, and for assaulting other members of the petitioner's family. They are now facing prosecution for offences punishable under Sections 189(2), 191(2), 191(3), 126(2), 329(4), 74, 115(2), 118(1), 352, 351(2)(3), 109 read with Section 190 of the Bharatiya Nyaya Sanhita, 2023, and under Sections 3(1)(r), 3(1)(s), 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015.

[4] It is contended that the said case is registered in Crime No.73/2025 and is presently pending trial. According to the petitioner, the present case is nothing but a counterblast.

[5] Learned counsel further points out that although the alleged incident is said to have taken place on 21.05.2025 at about 1.30 p.m., the victim was examined only on 25.05.2025. Though the complaint was lodged on 24.05.2025, the FIR reached the learned Magistrate only on 26.05.2025. These circumstances, according to the petitioner, clearly indicate that the petitioner, a B.A. student has been falsely implicated by foisting a heinous offence so as to deprive him of the benefit of bail.

[6] Per contra, the learned High Court Government Pleader appearing for the respondent State contends that the petitioner has now been charge-sheeted under the provisions of the POCSO Act, and therefore no indulgence is warranted.

[7] I have heard the learned counsel on both sides and carefully examined the charge-sheet materials, the medical evidence, and the manner in which the crime was registered, including the dispatch of the FIR to the jurisdictional Magistrate.

[8] On close examination of the records, it is seen that the alleged incident of rape is stated to have occurred on 21.05.2025 at around 1.30 p.m., whereas the complaint came to be lodged on 24.05.2025. The FIR, however, reached the learned Magistrate only on 26.05.2025. The records further disclose that the complainant's family members have themselves been charge-sheeted for serious offences including attempt to murder punishable under Section 109 of the BNS, 2023 and other allied offences. The medical evidence does not indicate any signs of forcible sexual assault, and no external injuries are found on the victim, though the alleged incident is said to have taken place in an open land. In these circumstances, and considering that the petitioner, aged about 23 years, has been in judicial custody since 27.05.2025, this Court is of the view that he is entitled to be extended the benefit of bail.

[9] Though the petitioner/accused No.1 is charged with the heinous offence of rape on a minor girl aged 17 years, the prosecution is required to establish the guilt of the accused during the course of a full-fledged trial. Now that the charge sheet has been filed, further custodial detention of the petitioner would serve no useful purpose. The apprehension of the prosecution that the petitioner may attempt to influence or threaten the victim can be adequately addressed by imposing stringent conditions. Ensuring the safety of the victim through such conditions would safeguard the prosecution's interest, whereas continued incarceration of the petitioner despite filing of the charge sheet would impinge upon his fundamental right to liberty guaranteed under Article 21 of the Constitution of India. Hence, considering the petitioner's young age of 23 years, this Court is inclined to exercise its discretion in his favour.

[10] For the foregoing reasons, the following order is passed:

ORDER

The criminal petition is allowed.

The petitioner/accused No.1 shall be enlarged on bail in Special Case No.5072/2025 arising out of Crime No.75/2025, registered for the offences punishable under Sections 189(2), 191(1), 115(1), 352, 351(2)(3), 64, 74, 126 read with Section 190 of the Bharatiya Nyaya Sanhita, 2023, and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, pending on the file of the III Additional District and Sessions Judge/Special Judge, Raichur, sitting at Sindhanur, subject to the following conditions:

i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the like sum to the satisfaction of the jurisdictional Court;

ii) The petitioner shall not tamper with the prosecution witnesses or evidence, either directly or indirectly;

iii) The petitioner shall regularly appear before the Trial Court during the course of proceedings, unless exempted for valid reasons by the said Court;

iv) The petitioner shall not involve himself in any criminal activity, whether of a similar nature or otherwise, in future;

v) The petitioner shall not leave the jurisdiction of the Trial Court without obtaining prior permission until disposal of the case;

vi) The petitioner shall not intimidate, threaten, or attempt to influence the victim in any manner during the pendency of the trial

2026(1)PRC26

MADHYA PRADESH HIGH COURT

(Hon'ble Judge Pranay Verma)

Writ Petition No 43325 of 2025 **dated 01/12/2025**

Victim X

Versus

State of Madhya Pradesh and Others

COMPENSATION ENTITLEMENT

Indian Penal Code, 1860 Sec. 376, Sec. 376D, Sec. 450, Sec. 342, Sec. 506 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 Rule 12 - Compensation Entitlement - Petitioner sought direction for payment of balance relief amount under SC/ST Act and Rules claiming she was entitled to full compensation as victim of gang rape - Authorities had earlier transferred partial amount - On examination it appeared that petitioner had turned hostile during trial leading to acquittal of accused and no confirmatory medical report was produced - Court held

that compensation under Rule 12 of SC/ST Rules is meant for victims who support prosecution and assist in justice process - Once petitioner turned hostile and acquittal followed she ceased to be a "victim of atrocity" under law - Hence she could not claim further compensation and any received amount was liable to be recovered by State -
Petition Dismissed

Law Point: Victim who turns hostile and causes acquittal of accused loses entitlement to compensation under SC/ST Act and Rules; relief is contingent on active cooperation in prosecution process.

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 376D, Sec. 450, Sec. 342, Sec. 506

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 Rule 12

Counsel:

Kirtee Agrawal, Rajwardhan Gawde

JUDGEMENT

Pranay Verma, J.- [1] By this petition preferred under Article 226 of the Constitution of India the petitioner has prayed for a direction to the respondents to pay the relief amount to her as per the Schedule to the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act, 1989').

[2] As per the petitioner, she belongs to the SC/ST community. An incident took place with her on 17.04.2020 within the limits of Police Station Tirla, District Dhar whereby offences punishable under Sections 450, 342, 376, 376-D, 506 of the IPC read with Section 3(1)(w)(i) and 3(2)(v) of the Act, 1989 were committed upon her. Upon completion of the investigation chargesheet was filed on 16.06.2020. On 10.08.2020 the Tribal Welfare Department, District Coordinator, Dhar transferred an amount of Rs.2,06,250/- in petitioner's account which represents only a part of the total entitled relief amount under the Act, 1989 and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 ('the Rules, 1995'). Upon trial the final judgment has already been passed in the case and thus the proceedings stand concluded. However the petitioner has not been granted the entire amount which ought to have been granted to her under the Act, 1989 and the Rules, 1995.

[3] The claim of the petitioner is based upon Rule 12 (4) of the Rules, 1995 which provides for relief in cash or in kind or both to the victim of atrocity. The same is as under:-

"12. Measures to be taken by the District Administration.

(4) The District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and

provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure I read with Annexure II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.

*****"

[4] Annexure-I appended to the said rule provides for the norms of relief amount. At serial No.44 offence of **rape** and unnatural offence is covered including gang **rape** under Section 376-D of the IPC and the relief provided for is Rs.8,25,000/-. It is under this entry that relief is being claimed by the petitioner. The same is as under:-

44	Rape, Unnatural Offences or Gang rape	
	(i) *****	
		Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows:
		(i) 50 per cent after medical
	(ii) Gang rape [Section 376-D of the Indian Penal Code (45 of 1860)	examination and confirmatory medical report; (ii) 25 per cent when the charge sheet is sent to the court;
		(iii) 25 per cent on conclusion of trial by the lower court.

[5] As per the aforesaid provision, since the offence registered on petitioner's complaint was under Section 376-D of the IPC, an amount of Rs.8,25,000/- is awardable to her. 50% payment is to be made after medical examination and conformity medical report, 25% when the charge-sheet is sent to the Court and 25% on conclusion of trial by the lower Court.

[6] In the instant case no medical report has been filed by the petitioner which may be said to be a confirmatory medical report. For award of 50% of the amount the requirement is medical examination and confirmatory medical report meaning thereby that in such medical report there must be a confirmation as regards the offence of gang **rape** having been committed upon the victim. There is no such report available in the present case hence the petitioner is not entitled for any amount under this sub head.

[7] In the trial which was held upon the report of the petitioner, she appeared before the Court but turned hostile and did not support the prosecution case. On the basis of her turning hostile the accused therein have been acquitted. In my opinion, if the petitioner had herself turned hostile and had not supported the prosecution case and eventually if it has been held that the accused have not committed the alleged offence then the aforesaid

provision as regards grant of relief relied upon by the petitioner would not come into play at all. The amount is to be paid to a 'victim of atrocity'. Once the petitioner had turned hostile before the lower Court and had not supported the prosecution case and the trial has ended in acquittal of the accused meaning thereby that no gang rape had been committed upon the petitioner, she would no longer fall within the definition of a "victim of atrocity " as provided under Sub Rule (4) of Rule 12 of Rules, 1995. She is hence not entitled for award of any relief to her as provided under the Rules, 1995.

[8] The FIR on the basis of which the entire claim has been founded has itself been found to be false and the accused have been acquitted because the petitioner turned hostile. This substantially undermines petitioner's right to seek further compensation. The petitioner turning hostile before the Court effectively nullified the legal basis upon which compensation under the Act, 1989 and the Rules, 1995 is predicated. Compensation under the Act is contingent upon prosecution of offences and victim's active participation in the legal process to bring offenders to justice. When a victim of an atrocity under the SC/ST Act resiles from his/her complaint and turns hostile during the trial it is akin to settling the matter with the accused and it disentitles the victim to claim any compensation under the Act and if any compensation has been received it must be returned to the State Government. The intent and object behind Rule 12 of the Rules, 1995 is to support victims during the prosecution of offences under the Act. When the prosecution is abandoned due to the victim turning hostile the foundational premise for awarding compensation no longer exists. Similar are the observations of the High Court of Delhi in **W.P. (C) No.258/2021 Balbeer Meena V/s State (NCT) of Delhi and Others decided on 27- 11-2024.**

[9] In **Balbeer Meena (Supra)** the Delhi High Court has relied upon the decision of the Allahabad High Court in **Jhabbu Dubey @ Pradeep Kumar Dubey V/s. State of U.P. and Others, W.P. (C) No.258/2021** wherein it was held as under:-

"23. Thus, the objective behind Rules 11 & 12 of the SC/ST Rules, 1995, is indeed laudable and commendable, but with a caveat/a rider over it. It presupposes that the state government has to bear the financial burden of the entire trial, whereby the offenders and wrongdoers may be punished after the trial. That's why at every stage of trial the Welfare department of the state government releases funds to the victim. But, where the parties have come to truce and settle their dispute outside the court, without any threat or coercion upon them, resultantly the entire trial gets aborted in its midst. No doubt it's a welcome step taken by the contesting parties, but the state government or its treasury shall not be put to any kind of financial loss. We are living in a Welfare State but surely not in a Charitable State. At the cost of repetition, since release of the funds in favour of the victim is at every stage of the trial viz: lodging of FIR; filing of charge sheet; committal of the case; and lastly conclusion of trial, as such, in the event of any truce between the parties, it's natural and logical result should be, return of the amount received by the victim from the state exchequer.

24. Moreover, when there is settlement between the parties, there is no threat for any offensive against the victim and the entire atmosphere is full of peace, tranquility and positivity. There cannot be any good justification to keep that money for the victim and in all fairness they are supposed to return back the money to the State Government. This is the hard-earned money of innocent tax-payers and any atrocities against the victims cannot be exploited to earn and enjoy the money from the State Government even when there is compromise between them."

[10] As has been observed by the Delhi High Court compensation mechanism under the Act, 1989 read with the Rules is intrinsically linked to the continuation of legal proceedings. The intent of the Act and the Rules is to deter atrocities against members of the Scheduled Castes and Scheduled Tribes by ensuring that offenders are prosecuted and that victims are supported throughout the legal process. Compensation serves as a means to facilitate justice, not as an end in itself. In situation where the victim herself turns hostile and thus effectively amicably settles the matter with the accused, the foundational premise of victimization under the Act is effectively negated. Awarding compensation in such scenarios would be contrary to the spirit of law. The principle of restitution dictates that one should not be unjustly enriched at the expense of another. The State should not be compelled to disburse funds when the intended purpose of supporting a victim through prosecution is no longer applicable. Ideally, any compensation received under the Act, 1989 and the Rules, 1995 should be returned when the legal proceedings terminate in acquittal of the accused due to the victim turning hostile. The Government ought to consider framing appropriate provisions for recovery of the amount already paid to the alleged victims in such circumstances.

[11] In the present case the prosecution against the accused has ended in their acquittal on account of the petitioner not supporting the prosecution case and turning hostile which effectively is an amicable settlement arrived at between her and the accused. In such circumstances it would not be justifiable for this Court to direct payment of any amount of compensation to the petitioner.

[12] Thus in view of the aforesaid, I do not find any merit in the petition. The same being devoid of any substance is hereby dismissed

2026(1)PRC30

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge Neeraj P Dhote)

Criminal Application; Criminal Appeal No 3642 of 2025; 743 of 2025

dated 27/11/2025

Shivaji Asaram Kadam

Versus

State of Maharashtra and Another

SENTENCE SUSPENSION

Indian Penal Code, 1860 Sec. 376 - Sentence Suspension - Application filed for suspension of sentence after conviction for rape of mentally challenged woman - Appellant aged sixty years undergoing ten-year sentence - Court observed lack of medical proof of victim's mental condition - Victim's testimony weak and not fully corroborated - Evidence disclosed arguable case - Appeal unlikely to be heard soon - Considering age and period of incarceration, sentence suspended till appeal disposal subject to bail bond - Sentence Suspended

Law Point: When conviction is based on debatable evidence and appeal hearing is distant, suspension of sentence may be granted considering age and incarceration period of convict

Acts Referred:

Indian Penal Code, 1860 Sec. 376

Counsel:

Nasimoddin R Shaikh, A D Wange, Ashok Raut

JUDGEMENT

Neeraj P. Dhote, J.- [1] This is an Application for Suspension of sentence imposed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.319/2022 by Judgment and order dated 14.01.2025 convicting the Appellant - Applicant for the offence punishable under Section 376(2)(1) of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for 10 (ten) years and fine of Rs.10,000/- (Rs. Ten Thousand only), in default to suffer Rigorous Imprisonment for six months.

[2] Heard the learned Advocate for the Applicant - Appellant, the learned APP for the State and the learned Advocate for the Respondent No.2 - Victim. With their assistance, perused the evidence on record.

[3] The case of the Prosecution, in brief, is that, the Victim was mentally challenged and was raped by the Applicant - Appellant on 17.08.2019 at about 04:00 p.m. at secluded place in the village. The incident was seen by the Eye Witness and the Applicant fled. The Victim was taken to her house. The incident was reported to the Police and Crime bearing No.296/2019 came to be registered with the Paithan Police Station for the offence of Rape against the Applicant. After the investigation, the Applicant came to be Charge-sheeted and after full-fledged Trial came to be convicted as above.

[4] Though it is the case of the Prosecution that the Victim was mentally challenged, there is no medical evidence in support of the same. PW1, who is the Brother of the Victim, in his evidence deposed that, he had not submitted any medical papers regarding mental condition of his Sister and also the Police did not demand for the same. The Victim was examined as PW4 before the learned Trial Court. The note put by the learned Trial Court before the testimony of PW4 records that she put some

questions to the witness and the witness was mentally ill, but she was able to understand the nature of questions and the importance of oath, and therefore, oath was administered to her. The only evidence of the Victim was that, she was residing with her Mother and Brother and on that day she was taken to the temple. Nothing has come in the evidence of the Victim. The evidence on record go to show that, the Statement of the Victim was recorded by the Police and also before the learned Magistrate in the presence of Special Teacher, who was examined as PW5. There is no concrete evidence to establish that the Victim was mentally challenged.

[5] There is no dispute that the Victim was 29 years of age at the time of the incident. The medical evidence speak of the sexual intercourse. The case primarily rests on the testimony of PW2, who claims to be the Eye Witness to the incident. However, the incident is reported to the Victim's Brother by PW3 who was not the Eye Witness to the incident. The above discussion show that, the Applicant has arguable case on merits. The sentence imposed on the Applicant is a term sentence of 10 (ten) years. The Applicant is behind the bars for the period of 3 (three) years and 8 (eight) months. The Applicant is 60 years of age. The Appeal is of 2025 and there is no possibility that it could be heard finally in the near future. In this view of the matter, I am inclined to allow the Application. Hence, the following order is passed.

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant, namely, Shivaji Asaram Kadam, by the learned Additional Sessions Judge, Aurangabad, vide Judgment and Order dated 14.01.2025, passed in Sessions Case No.319/2022, is hereby suspended till the final disposal of the Appeal.
- (iii) The Applicant be released on bail on furnishing P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand), with one surety in the like amount.
- (iv) The Applicant shall co-operate in early disposal of the Appeal.
- (v) Bail before the Trial Court.
- (vi) The fees of the learned Advocate for the Applicant appointed through legal aid is quantified at Rs.12,000/- (Rs. Twelve Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.
- (vii) The fees of the learned Advocate for the Respondent No.2 appointed through legal aid is quantified at Rs.10,000/- (Rs. Ten Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.
- (viii) Criminal Application stands disposed off accordingly

2026(1)PRC33

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge Shailesh P Brahme)

Criminal Application; Criminal Writ Petition No 661 of 2024; 1362 of 2023 **dated**
27/11/2025

XYZ; State of Maharashtra

Versus

State of Maharashtra; Chandulal S/o Suhail Kothari; Sunil Kochar; Paras Zumbarlal Lalwani; Rhushab Vikas Lalwani; Vikas Lalwani; Bhavesh S/o Vikas Lalwani; Bhavana Vikas Lalwani

AGE DETERMINATION DISPUTE

Indian Penal Code, 1860 Sec. 354A - Sec. 34 - Sec. 420 - Sec. 506 - Sec. 406 - Code of Criminal Procedure, 1973 Sec. 173 - Juvenile Justice (Care and Protection of Children) Rules, 2007 Rule 12 - Protection of Children from Sexual Offences Act, 2012 Sec. 34 - Sec. 11 - Sec. 12 - Juvenile Justice (Care and Protection of Children) Act, 2015 Sec. 94 - Juvenile Justice (Care and Protection of Children) Model Rules, 2016 Rule 94 - Age Determination Dispute - Victim and State challenged acceptance of 'B' summary report and refusal of reinvestigation in offence under POCSO and IPC - Victim claimed minor at marriage and time of offence - Discrepancies in birth dates from various records including private schools and ossification test - Court held that birth certificate issued by municipal body has greater probative value than private records or medical opinion - Found investigation and judicial approach consistent with statutory framework under Sec. 94 JJ Act - No case for reinvestigation made out - Petitions Dismissed

Law Point: For age determination under POCSO and JJ Act, birth certificate issued by statutory authority has highest evidentiary value-medical or school records can be relied only when statutory birth certificate unavailable-acceptance of 'B' summary justified when investigation legally complete

Acts Referred:

Indian Penal Code, 1860 Sec. 354A, Sec. 34, Sec. 420, Sec. 506, Sec. 406

Code of Criminal Procedure, 1973 Sec. 173

Juvenile Justice (Care and Protection of Children) Rules, 2007 Rule 12

Protection of Children from Sexual Offences Act, 2012 Sec. 34, Sec. 11, Sec. 12

Juvenile Justice (Care and Protection of Children) Act, 2015 Sec. 94

Juvenile Justice (Care and Protection of Children) Model Rules, 2016 Rule 94

Counsel:

Sanjeev B Deshpande (Senior Advocate), Vinod P Patil, A B Girase, Rajendrraa Deshmukkh (Senior Advocate), R G Dodiya

JUDGEMENT

Shailesh P. Brahme, J.- [1] Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

[2] The victim and the State are challenging common judgment and order dated 09.03.2023 accepting 'B' summary report and rejection of permission to re-investigate in the crime. The offence in question is common, hence, I propose to decide it by common judgment by referring to papers of Criminal Application No. 661 of 2024.

[3] Xyz is a victim/informant of offence bearing Crime No. 122 of 2021 lodged on 25.02.2021 with Shrirampur (City) police station, which was transferred to Jamner police station on 02.03.2021 and renumbered as Crime No.68 of 2021. It has been investigated and final report under Section 173 (2) of the Code of Criminal Procedure for 'B' summary was submitted bearing Summary No.24 of 2021. Application (Exh. 11) was submitted on 09.02.2023 seeking permission for reinvestigation by police inspector. Criminal Misc. Appln. No. 204 of 2022 was a protest petition submitted by the informant. Judicial Magistrate First Class, Jamner, forwarded matter to learned Special Judge, Jalgaon vide order dated 05.12.2022. Being aggrieved, accused preferred Criminal Revision Application No.6 of 2023. By common judgment and order, which is under challenge, 'B' summary report was accepted and Exh. 11 was rejected.

[4] On 11.02.2021, a report was lodged by one Bhavna Vikas Lalwani against XYZ, Chandulal Kothari, Jyoti Chandulal Kothari, Sunil Kochar and Sunny with Jamner Police Station, District Jalgaon for the offences punishable under Sections 420, 406, 506 read with Section 34 of Indian Penal Code stating that Sunil Kochar had assured the informant to search a bride for son and he was paid money. The proposal of XYZ was accepted and marriage was fixed on condition of payment of Rs.6,00,000/- to bride's father. Marriage was solemnized on 09.12.2020. On 29.12.2020, XYZ was taken back to her parental home under the pretext of deteriorating health of grandfather. While leaving matrimonial home, XYZ and other accused took away ornaments, clothes offered by informant. Thereafter, she refused to return. It was offence Crime No.41 of 2021 of Jamner police station.

[5] On 25.02.2021, XYZ reported at Shrirampur police station that she was minor and despite her protest she was forced to marry Rushab Vikas Lalwani, who was found to be stutter. She was being harassed by her in-laws/accused. Her cousin father-in-law Paras Lalwani outraged her modesty and other accused abetted it and threatened her not to disclose to anybody. She was asked to have physical relations with Paras. Hence, offence was lodged against Chandulal Kothari, Sunil Kochar, Paras Lalwani, Rushabh Lalwani, Bhavesh, and Bhavna Lalwani for offences punishable under Sections 354A of

Indian Penal Code, Section 12 of POCSO Act and under Section 11 of Prohibition of Child Marriage Act. It was registered as Crime No.68 of 2021 at Jamner police station.

[6] On 28.04.2021 one more offence was lodged by Alkesh Lalwani against Jyoti Chandulal Kothari, Prafulla Lodha and Sunil Kochar under Section 384, 506 read with Section 34 alleging that accused demanded ransom for settling the allegations in Crime No.68 of 2021. Informant reported it to the police. A trap was laid on 28.04.2021. Jyoti Kothari was caught red handed with cash of Rs.50,000/-. It was offence Crime No.403 of 2021 of Lasalgaon police station.

[7] Xyz claims to be minor at the time of her marriage and lodging of F.I.R. Her mother had taken divorce from her biological father. Then she contracted second marriage with Chandulal Kothari. Informant was forced to marry Rushabh Lalwani. Thus three different names of the victim appeared in the police papers. Her three different birth dates revealed in the investigation. Two are procured from record of private school and one from birth certificate issued by Shirampur Municipal Council, which is accepted by the Courts below.

[8] The learned Senior Counsel Mr. Deshpande would submit that after lodging of report in Crime No.68 of 2021, the statements of victim and her mother were recorded under Section 164. The offences are under the provisions of the Protection of Children from Sexual Offences Act (POCSO), as well as Bhartiya Nyaya Sanhita (BNS). No investigation at all is conducted in respect of sexual assault. Undue importance is given to the allegations of Crime No.403 of 2021. Having referred the matter to the ossification test, which was indicating the probable age of the victim between 14 to 17 years, the certificate issued by the local authority should have been discarded. The mandate of Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is overlooked.

[9] The learned senior counsel further submits that the finding recorded in paragraph No.23 indicating the victim is major, is perverse and unfounded. The learned Judge totally overlooked that Investigating Officer committed dereliction of the duties. It is submitted that closer report was submitted without conducting investigation into the allegations. It is further submitted that impugned judgment is a miscarriage of justice because investigation is not fair and it is discriminatory.

[10] Learned Government Pleader Mr. Girase would submit that the matter was referred to the ossification test of the victim because birth certificate of the local body was not available. The State Government promptly filed application Exh.11 which is maintainable. It is submitted that reinvestigation should have been directed by the learned Judge.

[11] To repel the submissions of the applicants, my attention is adverted to the affidavit-in-reply. It is submitted by learned senior counsel Mr. Deshmukh that offence is concocted and politically motivated. The victim was all the while major which is reflected from her conduct in the proceeding of bail, remand. It is further submitted that

to settle personal score, record of the private school was manipulated and thereafter application Exh.11 was directed to be filed. The malafides of the applicants and the persons behind them are writ large as the elections of local body are ensuing.

[12] Xyz claims to be of 13 years when she was forcibly married. The investigation report was submitted on 29.05.2021. It reveals from the report that statements are recorded and information is collected from the private schools regarding date of birth of the victim. The ossification test was conducted disclosing probable age ranging from 14 to 17 years vide report dated 09.03.2021. The birth certificate was issued by the Municipal Council under Births and Deaths Registration Act of 1969 on 04.05.2021 disclosing the date of birth as 01.06.2002. It was not available when she was referred for ossification test.

[13] The bonafide certificate issued by Dadasaheb Haribhau Ghadge Patil Secondary School reveals the date of birth as 01.06.2007. The record of another private school i.e. A. D. Muley private school discloses the date of birth as 20.05.2004. After considering the statements recorded during the course of investigation, both the dates of birth referred above are found to be suspicious. The reliance is placed on birth certificate dated 04.05.2021 issued by local body. It has more probative value. I am fortified in my view by law laid down in case of **CIDCO Vs Vasudha Gorakhnath Mandevlekar**, 2009 7 SCC 283.

[14] As per Section 34 of POCSO Act, Special Court is empowered to determine age of the victim. For that purpose recourse can be had to Section 94 of the Juvenile Justice (Care and Protection of Children) Act of 2015. The relevant portion is as follows:

"94 (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

[15] The birth certificate issued by the local body shows that date of registration of the birth is 01.06.2002 disclosing names of the parents. The certificate was issued on 04.05.2021. The victim was referred to ossification test without there being any attempt to secure birth certificates from local body. The report of the test is of 09.03.2021. In the

teeth of Section 94 (2), the Investigating Officer should have collected the birth certificate first instead of going for the ossification test. The birth certificate issued by local body cannot be discarded due to subsequent report of ossification test.

[16] The harmonious and purposive interpretation of Sub Section (2) is that the sequence provided by Clause Nos.(i) and (ii) shall be followed and in the absence of information, recourse to (iii) shall be taken. The purport is to have authenticated information of date of birth. The birth certificate as contemplated by Clause (ii) has a probative value as it is issued under the statute. The birth certificate issued by local body does not lose its efficacy merely because it is secured after report of ossification test.

[17] Learned senior counsel Mr. Deshmukkh has referred to the judgment of **Rajni Vs. State of Uttar Pradesh and another in Criminal Appeal No.603 of 2025**. It is useful to refer to paragraph No.33.11 which is as follows:

"33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

I am unable to accept the submissions of learned senior counsel Mr. Deshpande that report of the ossification test in respect of date of birth needs to be accepted as a gospel truth.

[18] The observations in paragraph No.23 of the impugned judgment are unwarranted. My attention is adverted to Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007. The Rules of 2007 stood repelled by Rule 94 of the Juvenile Justice (Care and Protection of Children) Model Rules of 2016. I am not inclined to accept the submissions in respect of repealed Rules of 2007. Those can not be made applicable.

[19] I find no illegality in the impugned judgment for accepting the date of birth as 01.06.2002 which is corroborated by aadhar card and ration card. The offence bearing Crime No.68 of 2021 is under the provisions of POCSO Act as well as IPC/BNS. The closer report refers to the offence bearing Crime No.403 of 2021 registered at the instance of Mr. Alkesh Lalwani under Section 384, 506, 34 of IPC as well as Crime No.41 of 2021 under Section 420, 406, 506 of IPC registered at the instance of Bhavna Lalwani.

[20] Undisputedly, Crime No.41 of 2021 was registered on 11.02.2021. Thereafter, the offence in question bearing Crime No.122 of 2021 (68 of 2021) was registered on 25.02.2021. The school record showed inconsistent date of birth. It was the duty of the victim or her mother to disclose the Investigating Officer authenticated record of date of birth. The date of birth was traced out during the course of investigation from the Municipal Council. There is a reason to infer that prosecutrix and her mother misled the police and the Investigating Officer.

[21] The closer report was submitted on 29.05.2021 by Deputy Police Inspector Mr. Ambadas Patharwat. Application Exh.11 was filed on 09.02.2023 by Police Inspector Mr. Kiran Shinde seeking permission for re-investigation. The letter dated 08.02.2023 addressed by Superintendent of Police, Jalgaon refers the directions issued by Deputy Chief Minister to submit report within 15 days. In pursuance of that, instructions were given to file application for re-investigation in the matter. Application Exh.11 was not filed promptly but it was outcome of instructions from the Deputy Chief Minister. This Court has reservations for the genuineness to have re-investigation in the matter.

[22] The role played by victim and her mother is dubious. In all probabilities the offence in question might have been registered to counter blast first offence bearing Crime No.41 of 2021. The subsequent events which are pointed out by learned senior counsel Mr. Deshmukh are worth considering. On 28.04.2021 offence bearing Crime No.403 of 2021 was registered against mother of the victim for accepting cash of Rs.50,000/-. It has been also pointed out that Crime No.564 of 2025 was registered against one of the accused respondent Paras Lalwani for having committed assault. The pre arrest bail was rejected by the Trial Court and Anticipatory Bail Application No.1384 of 2025 was allowed by learned Single Judge by order dated 25.09.2025. The order of the High Court also refers that there are cases filed against each other.

[23] The victim did not claim herself to be minor when she filed her Vakalatnama in her own name and the affidavits before the Judicial Magistrate First Class, Jamner. In the remand proceedings of Crime No.41 of 2021, it was not disclosed that she was minor. The victim and her mother are conveniently using the status of minority. Their conduct does not inspire any confidence for the allegations levelled against the accused persons. The re-investigation for such dishonest persons would be abuse of process of law which cannot be the purport of Section 173(2) of Cr.P.C.

[24] My attention is adverted by learned senior counsel Mr. Deshmukh to the alleged political motive to implicate the accused in the offence in question. The proceedings of Change Report No.590 of 2008 are referred. It is difficult to offer any comment on that aspect of the matter as the material is scanty and appreciation of facts are not possible at this stage.

[25] Reliance is placed by learned senior counsel Mr. Deshpande on the judgment of Amar Nath Chaubey Vs. Union of India and others, MANU/SC/0938/2020. I have gone through paragraph Nos.8 and 9 which inter alia refers to earlier judgment of Supreme Court. The law laid down cannot be made applicable to the present case. The case at hand is distinguishable on facts. I have already recorded that the conduct of the victim and her mother is dishonest. Further reliance is placed on the judgment of Maghavendra Pratap Singh Vs. State of Chhattisgarh, MANU/SC/0443/2023. The ratio laid down will not help the applicant.

[26] Learned Government Pleader Mr. Girase has relied on the judgment of Supreme Court in the matter of **Gangadhar Janardan Mhatre Vs. State of Maharashtra and others**, 2004 AIR(SC) 4753 and **State through Central Bureau of**

Investigation Vs. Hemendhra Reddy and another, 2023 16 SCC 779. It is rightly contended that the closer report was not the impediment to entertain application Exhibit 11 but the facts of the case at hand do not warrant further investigation.

[27] The sequitur of above discussion is that there is no perversity or illegality in the common judgment and order. I find no miscarriage of justice or any need for re-investigation.

[28] Criminal Application No.661 of 2024 as well as Criminal Writ Petition No.1362 of 2023 are rejected.

[29] Rule stands discharged

2026(1)PRC39

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge Debangsu Basak; Md Shabbar Rashidi)

Cr A (Criminal Appeal); C R A N No 23 of 2025; 1 of 2025 **dated 27/11/2025**

Satish Barman

Versus

State of West Bengal & Anr

SEXUAL ASSAULT

Code of Criminal Procedure, 1973 Sec. 428, Sec. 164, Sec. 222, Sec. 313 - Protection of Children from Sexual Offences Act, 2012 Sec. 4, Sec. 6, Sec. 29 - Sexual Assault - Appeal filed against conviction for offence under POCSO Act - Appellant contended false implication due to property conflict - Defence argued contradictions in victim's statement and absence of medical support - Medical report indicated penetration consistent with assault - Witnesses including victim's mother, aunt and neighbours corroborated incident - Minor contradictions held not fatal - Evidence consistent that appellant enticed minor and committed assault - Prosecution proved guilt beyond reasonable doubt - Presumption under Sec. 29 not rebutted - Conviction and sentence upheld - Appeal Dismissed

Law Point: Minor inconsistencies in statements of witnesses do not vitiate prosecution when core facts of sexual assault stand proved and presumption under POCSO Act remains unrebutted

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 428, Sec. 164, Sec. 222, Sec. 313

Protection of Children from Sexual Offences Act, 2012 Sec. 4, Sec. 6, Sec. 29

Counsel:

Hillol Saha Podder, Niloy Chakraborty, Sagnik Sankar Sikdar

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] The appeal is in assailable judgment of conviction and order of sentence dated March 5, 2025 passed by learned 2nd Additional Sessions Judge-cum-Special Court (under POCSO Act), Jalpaiguri in connection with Sessions Case (POCSO) No. 87 of 2024 arising out of Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024 under Section 6 of the POCSO Act.

[2] By the impugned judgment of conviction, the appellant was convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO' Act). By the impugned order of sentence, the appellant was sentenced to suffer rigorous imprisonment for 20 years and a fine of Rs. 20,000/-. In default of payment of fine, the appellant was directed to undergo simple imprisonment for a further period of 2 months.

[3] Learned advocate for the appellant submitted that the appellant has been falsely implicated in this case owing to property disputes between himself and the family members of the victim. Learned advocate for the appellant refers to the evidence of the victim (PW 1) and her mother (PW 2).

[4] Learned advocate for the appellant also submits that there are material contradictions in the statement of PW 1 vis-avis her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). It is also submitted that the evidence of the victim is inconsistent insofar as the date, time and manner of the incident is concerned.

[5] Learned advocate for the appellant also submitted that the medical evidence adduced on behalf of the prosecution does not support the story of sexual assault upon the victim. According to him, the injuries found on the victim were opined by PW 3 that such injury may be caused due to many reasons like cycling, climbing, dancing and gymnastics. Age of injury was not determined by the doctor. Learned advocate for the appellant submitted that there was inordinate delay in lodging the First Information Report (for short, 'F.I.R.') which raises a reasonable doubt with regard to the veracity of the prosecution's case. Learned advocate for the appellant also submits that in fact, prosecution has not been able to substantiate any injury in support of the case of the prosecution with regard to penetrative sexual assault upon the victim.

[6] On the other hand, learned Additional Public Prosecutor for the State submits that non-disclosure of the exact date of incident by the victim is not fatal. Lack of specific date is minor inconsistency which does not destroy the case of the prosecution. In support of his contention learned Additional Public Prosecutor relied upon **The State of Punjab vs. Gurmit Singh & Ors**, 1996 2 SCC 384. Learned Additional Public Prosecutor further submitted that in Indian society rape is considered to be a social stigma and for such reason a victim family takes time in deciding to report to the police.

Delay in lodging the F.I.R. does not essentially result in the destruction of prosecution's case.

[7] Learned Additional Public Prosecutor also submitted that variation in describing the exact location of the place of occurrence is considered as minor discrepancy which does not vitiate the prosecution's case.

[8] It is also submitted on behalf of the learned Additional Public Prosecutor that contradictions in the statement of victim vis-a-vis her statement recorded under Section 164 of the Cr.P.C. is not fatal unless the contradiction fundamentally changes the core fact of assault. Minor contradictions cannot be basis for an acquittal. Learned Additional Public Prosecutor also submitted that the prosecution has been able to prove the fundamental facts with regard to the alleged incident. In terms of Section 29 of the POCSO Act, it was the appellant who was under obligation to disprove the legal presumption.

[9] It is submitted by learned Additional Public Prosecutor that the defence raised by the appellant was highly technical which does not vitiate the conviction based on the facts and circumstances of the case.

[10] Relying upon **State of H.P. vs. Asha Ram**, 2005 13 SCC 766 learned Additional Public Prosecutor submitted that in a case of sexual offence, evidence of prosecutrix can be considered to be the sole basis of conviction of the accused.

[11] The mother of the victim lodged a written complaint with the police on June 12, 2024. It was alleged that 10 days prior to the lodging of the written complaint, the convict, who was her neighbour, taking advantage of her absence, took away her minor daughter, who was then 12 years old, forcibly to the backyard by the house of the de-facto complainant. It was also alleged that the convict engaged in a physical relationship with the victim and touched private parts of the victim with his hands. The victim informed the matter to the de-facto complainant. Subsequently, the de-facto complainant lodged the written complaint.

[12] On the basis of such written complaint, Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024 under Section 6 of the POCSO Act was started against the appellant. Police took up investigation and on completion of investigation submitted charge-sheet. Accordingly, on the basis of materials in the case diary, charge under Section 6 of the POCSO Act was framed against the convict. The appellant pleaded to be not guilty of the charge and claimed to be tried.

[13] In order to substantiate the charge, prosecution examined 9 witnesses in all. In addition, prosecution also relied upon certain documentary as well as material evidence.

[14] The victim deposed as PW 1. She stated that the house of the appellant was intervened by two houses of her house. She identified the appellant in Court. She further stated that her father was a mason whereas her mother worked as a day labour. Her parents used to go out for their respective jobs at 10:00 a.m. everyday and returned by

05:00 p.m. She had a sister aged about 8 years and a brother aged about 4 years. Her grandmother also resided with her.

[15] Pw 1 also stated that in the month of June 20, 2024 at about 2:00 p.m. her sister and brother were playing outside, her grandmother was in the field grazing cattle and she was alone in her room. At that time, appellant came to her house and called her. He reported to PW 1 that her goat was moving in the locality beside a lane. PW 1 went in search of the goat. When she was returning home, appellant pulled her hand and forcibly took her inside a narrow lane. He tied her hands with a gamcha and pressed cloth in her mouth. Thereafter, the appellant removed the wearing apparels of PW 1 and inserted his male genital organ into her genital organ. PW 1 suffered pain due to the acts of the appellant. PW 1 was also threatened that her brother would be killed if she disclosed the incident to anyone. Due to such threats, she could not divulge the incident to her family members. PW 1 further stated that on another day in the evening, PW 1 went to the roof of adjacent building with her brother and other friends. When they were coming down through the stairs with her brother, the appellant suddenly pressed her breasts. She further stated that after 10 days when she was felt severe pain in her private parts, she was compelled to divulge the incident to her mother. Thereafter, her mother lodged a complaint against the appellant. PW 1 stated that she was interrogated with the police in connection with the incident. She was also taken to North Bengal Medical College and Hospital (for short, 'NBMCH') for medical examination. She proved her signature on the consent note as well as medical report. She also recorded statement before learned Magistrate under Section 164 of the Cr.P.C. She proved her signature on such statement. PW 1 was also cross-examined at length. She stood by her statement in the examination in chief in such cross-examination.

[16] Mother of the victim deposed as PW 2. She stated that she lodged the complaint against the appellant. She stated that the house of the appellant was adjacent to her house intervened by two houses. She identified the appellant in Court.

[17] Pw 2 further stated in her deposition that at the relevant time she saw her daughter mentally depressed. When she asked the victim about her mental depression, she divulged that when she was alone in the room, the accused called her on the pretext to see her goat and took the victim on the backside of the house of PW 2. She also stated that the appellant tied the hands of the victim with a gamcha and put cloth into her mouth. She also reported that the appellant removed the pant of the victim and also his own gamcha and inserted his male genital organ into the female organ of the victim. The incident took place 10-12 days prior to when the victim divulged the incident to PW 2. PW 2 also stated that she informed the incident to her husband and neighbours. Thereafter, a written complaint was drafted in a computer shop as per her dictation which was read over and explained to her in Bengali. Thereafter, PW 2 put her signature on the written complaint. She proved the written complaint (Exhibit 4) and her signature thereon (Exhibit 4/1). She further stated that the victim was taken to NBMCH for medical examination of the victim. PW 2 signed on the consent note which she proved.

The victim was also taken to Court for recording her statement before the Magistrate. She further stated that the police seized the birth certificate of the victim under a seizure list dated June 12, 2024. She signed on such seizure list. She also proved the birth certificate of the victim.

[18] In her cross-examination PW 2 stated that she did not disclose in the written complaint that the victim had reported to her that her hands were tied up by gamcha and the appellant put a cloth into her mouth. She also stated in her cross-examination that there was a dispute between herself and the appellant regarding usage of drain long ago.

[19] A medical officer was examined as PW 3. He stated that on June 12, 2024 he examined the victim and prepared a report to that effect. He proved the medical examination report (Exhibit 2/1). He also stated that he gave opinion to the effect that from the clinical examination and findings it was evident that penetration of the vagina of the victim had occurred. In his cross-examination PW 3 stated that apart from sexual assault, injury on 7'O clock position might be caused due to cycling, climbing, dancing and gymnastics.

[20] Sister of the de-facto complainant deposed as PW 4. She identified the appellant in Court. PW 4 further stated that on the day of lodging the complaint, she came to know from her elder sister that on the date of incident, her sister and husband of such sister were out of their house for their respective jobs and the other children were playing outside. The victim was alone in the house. On that day, the appellant entered the house and took the victim to the backside of her house and committed sexual intercourse upon her. PW 4 also stated she also enquired about the incident from the victim who narrated the incident to her. PW 4 also stated that she came to know that accused committed rape upon the victim about 12 days prior to lodging of the complaint. She was interrogated by police. The victim was aged 12 years at the time of incident. In her cross-examination, PW 4 stated that she came to know about the incident at the police station from PW 2. She also stated that when the victim girl narrated the incident, her mother and aunt (boroma) were also present.

[21] Aunt (elder mother) of the victim girl was examined as PW 5. She stated that her house is situated adjacent to that of the victim. She also stated that about 7 months ago (from February 5, 2025) the victim narrated to her that 12 days prior to such narration, appellant took the victim to the backside of her house and committed rape upon her. She further stated that the appellant is her neighbour and was a regular visitor to her house. He used to play with the children of PW 2 often. PW 5 identified the victim in Court. She was interrogated by police. PW 5 was cross-examined on behalf of the appellant but nothing favourable appears to have been elucidated in such cross-examination.

[22] Another medical officer of NBMCH was examined as PW 6. He stated that on June 24, 2024 he examined the appellant and prepared a report upon such examination in his pen and signature. PW 6 proved such report (Exhibit 7). It was also signed by the appellant.

[23] A neighbour of the victim deposed as PW 7. She stated that about 7 months ago at about 12:30-1:00 p.m., when she was returning home with her son from his school, she saw the accused coming out from a newly constructed house situated adjacent to the house of PW 2. She also saw the victim coming out from the house crying. PW 7 further stated that after 10-12 days, the victim divulged to her mother that the appellant committed rape upon her in a vacant place situated beside her house. In turn, the victim and PW 2 informed the incident to PW 7 and other neighbours. Thereafter, a complaint was lodged by PW 2. PW 7 was interrogated by police in connection with such incident. She identified the appellant in Court.

[24] Another neighbour of the de-facto complainant deposed as PW 8. He stated that he identified the appellant in Court. PW 8 stated that about 6-7 months ago, one day he found that police had come to the house of PW 2. PW 8 was also called by police at the house of PW 2. When he went there, he came to know from PW 2 that the appellant had touched body of the victim and also committed rape upon her. He was, however, not interrogated by police.

[25] The investigating officer of the case was examined as PW 9. He stated that on June 12, 2024 the Officer-in-Charge, S.I. Prasenjit Dey Sarkar received a written complaint and forwarded the same to Bhaktinagar Police Station for registering a case. He proved the endorsement of the officer-in-charge. On the basis of the forwarding of the officer-in-charge, the inspector-in-charge, Bhaktinagar Police Station registered Bhaktinagar Police Station Case No. 527 of 2024 dated June 12, 2024. PW 9 proved the endorsement of the inspector-in-charge as well as the formal F.I.R. The case was endorsed to PW 9 for investigation. In his deposition, PW 9 has described various steps taken by him in the investigation of the case. He examined the complainant as well as other witnesses and recorded their statement, took steps for medical examination of the victim and also for recording her statement under Section 164 of the Cr.P.C. He seized the birth certificate of the victim. He also conducted a raid to secure the arrest of the appellant. He visited the place of occurrence and prepared draft sketch map with index of the place of occurrence. Upon conclusion of investigation, he submitted charge-sheet against the appellant under Section 6 of the POCSO Act.

[26] Upon conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. In such examination, the appellant pleaded innocence and claimed allegation to be false. He, however, declined to adduce any defence witness.

[27] The convict, according to the case of the prosecution, is alleged to have committed rape upon the victim. According to the case set out in the written complaint, the appellant committed rape upon the victim by taking advantage of her being alone in the house. The victim deposed in her evidence that at the relevant point of time her parents were out for their jobs, her brother and sister were playing outside and her grandmother had gone to field for grazing the cattle. She was alone in the house. At that time, the appellant came to the house and told her that her goats were moving stray in

the area. On such reporting by the appellant, when the victim went out to look for her goats, the appellant pulled her in a narrow lane and committed rape upon her. The victim also made a statement under Section 164 of the Cr.P.C. In such statement also the victim narrated that the appellant came to her house and reported that three of her goats had entered a lane situated beside her house. When she went there, she found no goats. While she was returning, the appellant pressed her hands and mouth by a piece of cloth. The appellant removed her wearing apparels and committed rape upon her.

[28] Mother of the victim was admittedly not in the house at the relevant point of time. She was informed about the incident by the victim. In her deposition, the mother of the victim (PW 2) narrated the incident exactly that was narrated by the victim (PW 1). She had stated that the victim was called by the appellant from her house, when she was alone, on the pretext of looking for her goats. Thereafter, on the backside of the house of PW 1, the appellant caught the appellant, tied her hands with gamcha, put cloth into her mouth. Thereafter, the appellant committed rape upon her.

[29] Pw 1, the victim stated in her deposition that when she divulged the incident to her mother, her jethi (elder aunt) was also present there. The said jethi deposed as PW 5. She corroborated the statement of PW 1 that the appellant took her to backside of their house and committed rape upon her. PW 7 has also corroborated the statement of PW 1 that the victim divulged before her mother that the appellant committed rape upon her in a vacant place situated beside her house. She was informed about the incident by the mother of the victim. PW 2 in her deposition has stated that after coming to know about the incident from her daughter, she first informed her husband and, thereafter, other neighbours.

[30] Therefore, from the evidence on record adduced on behalf of the prosecution it appears that it is the consistent case of the prosecution that at the relevant time, the victim was alone in her house. She was called by the appellant on the pretext that some of her goats were roaming in the locality. When the victim came out of her house in search of the goats and entered a narrow lane beside her house, the appellant caught her, tied her hands and put cloth into her mouth. It is the consistent statement of the prosecution witnesses that after doing so, the appellant committed penetrative sexual assault as against the victim. The appellant made out a case that there are material contradictions in the statements of prosecution witnesses which tell upon the veracity of the prosecution case. While there may be some minor discrepancies at the time of cross-examination of the prosecution witnesses, it is a consistent case which has come out from the evidence on behalf of the prosecution that the victim was called by the appellant and that the appellant committed penetrative sexual assault upon the victim in a narrow lane situated beside the house of the victim. It is also the consistent case of the prosecution that while doing so, the appellant tied the hands of the victim and put cloth into her mouth.

[31] It is nowhere in dispute that at the relevant time, the victim was aged about 12 years. Initially, the victim did not divulge the incident to her parents. It has been alleged

that she was threatened by the appellant. For such reason, she did not disclose the incident immediately. The victim, after disclosing the incident to her mother and after lodging of the complaint with the police, was medically examined by PW 3. PW 3, after such examination of the victim opined that, from the clinical examinations and findings it was evident that penetration of the vagina of the victim had occurred. In his report (Exhibit 2) PW 3 also noted several injuries which is prescribed below:-

- "1. Scar mark 1 cm x 0.5 cm over lateral end of left eyebrow;
2. Pin head size black mole over right forearm 1 1/2" below elbow point"

[32] At the time of medical examination of the victim, PW 3 noted the history of assault as narrated by the patient party where the appellant was named as the assailant. PW 3 also found healed tearing of hymen at 7'O clock position.

[33] Such injuries which were noted and described by PW 3 in his medical examination report not only corroborates the penetrative sexual assault upon the victim who was then only 12 years of age, but at the same time also corroborates the power used by the assailant in the commission of penetrative sexual assault. Such injuries noted by PW 3 go side by side with the statement of the victim (PW 1) and other prosecution witnesses to the effect that the hands of the victim were tied and the appellant put cloth into the mouth of the victim before the commission of the offence. The statement of PW 1 stands corroborated not only by the evidence of PW 2, PW 5 and PW 7 but also gets overwhelmingly corroborated by the medical evidence i.e. PW 3 and Exhibit 2. The evidence of another medical officer (PW 6) together with his report (Exhibit 7) goes to establish that the appellant was physically capable of committing sexual intercourse.

[34] Therefore, on the basis of the evidence of PW 1 duly corroborated by that of PW 2, PW5, PW 7 and PW 8, it is convincingly established that it was the appellant who called the victim from her house, took her into a narrow lane beside her house, tied her hands and mouth and ultimately committed penetrative sexual assault upon her. Such case of the prosecution is further corroborated by the medical evidence (PW 3) coupled with Exhibit 2 that the victim was sexually assaulted. Her hymen was found ruptured at the age of just 12 years.

[35] In **Gurmit Singh & Ors.** (supra), the Hon'ble Supreme Court laid down the following:-

"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great

responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

[36] A case has been made out on behalf of the appellant that he has been falsely implicated in this case out of grudge and old enmity. For such reason, the appellant relied upon the cross-examination of PW 2 where she stated that long ago a dispute had occurred between herself and the appellant regarding the usage of drain. Similarly, PW 1 in her cross-examination stated that she usually used the roads situated in front of the house of the appellant who claimed his ownership over the road. He, however, never objected to using of the road by PW 1. PW 2 has stated that she had some dispute with the appellant long ago. However, the appellant has not brought forth anything to establish that such dispute between him and PW 2 was of such a degree that he would be implicated in a false case. No evidence whatsoever has been produced on behalf of the appellant to establish such dispute and as to how old the dispute was. In view of the aforesaid facts and circumstances, we could not persuade ourselves to believe, even remotely, that the appellant has been falsely implicated in this case by the de-facto complainant or her family or relatives out of grudge over some pre-existing disputes.

[37] So far as the defence case as to the contradictions in the prosecution witnesses is concerned, we have noted hereinbefore that the evidence of the prosecution is consistent with regard to the date, time, place and the manner of commission thereof. The defence has not been able to point out any major contradiction which imprints any dent on the evidence of the prosecution with reference to the place of occurrence, date and time of occurrence and the manner of incident in which it was executed.

[38] So far as the delay in lodging the F.I.R. is concerned, it is evident that the written complaint was lodged by PW 2 after 10-12 days of the incident. PW 1 (the victim) herself stated in her deposition that she did not disclose the incident to her mother out of threat by the appellant. She disclosed it after 10-12 days of the incident. In fact, she, under the evidence on record, goes to show when she felt pain in her private parts, she disclosed the incident to her mother as well as PW 5. It is not uncommon in our society, irrespective of threat allegedly meted out by the appellant, an incident of rape upon a victim of 12 years is not reported until the victim finds herself in a position which makes her to disclose such incident. In the case at hand, admittedly the incident

was reported by the victim after 10-12 days of the incident when she felt unbearable pain her private parts and was forced to disclose the incident. After knowing of the incident, the mother of the victim (PW 2) instantly reported the matter to the father of the victim and other neighbours and ultimately lodged an F.I.R. In such circumstances, we are of the opinion that the delay in lodging the F.I.R., if any, does not tell upon the veracity of the prosecution case and cannot vitiate the case.

[39] In **Asha Ram** (supra), the Hon'ble Supreme Court held that,

"19. In *State of Punjab v. Gurmit Singh* this Court pointed out at SCC p. 403, para 21:

Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)"

[40] The materials on record go to show that the charge against the appellant was framed under Section 6 of the POCSO Act which relates to punishment for aggravated penetrative sexual assault. However, upon conclusion of trial, learned trial Court proceeded to convict the appellant for the offence of penetrative sexual assault under Section 4 of the POCSO Act, though, no charges were framed against the appellant under Section 4 of the POCSO Act. For the offence of aggravated penetrative sexual assault, Section 6 of the POCSO Act prescribes a punishment of not less than 20 years which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine. The offence of penetrative sexual assault under Section 4(1) of the POCSO Act prescribes a punishment of imprisonment of either description for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. Section 4(2) of the POCSO Act provides a punishment akin to that for the offence of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. In essence, Section 4 of the POCSO Act is a minor offence as against the offence punishable under Section 6 of the POCSO Act for the purpose of Section 222 of the Cr.P.C. In that view

of the facts, though charge against the appellant was framed under Section 6 of the POCSO Act, he was convicted under Section 4 of the POCSO Act, though no charge under Section 4 of the POCSO Act was framed against him. Such conviction and sentence cannot be said to be bad in law in view of the provisions contained under Section 222(2) of the Cr.P.C.

[41] On the basis of the discussion made hereinbefore, we find no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

[42] Consequently, the appeal being **CRA (DB) 23 of 2025** is dismissed. Connected application being CRAN 1 of 2025 is disposed of.

[43] Period of detention suffered by appellant during investigation, enquiry or trial shall be set off against the substantive sentence imposed on him in terms of Section 428 of the Cr.P.C.

[44] Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[45] I agree

2026(1)PRC49

DELHI HIGH COURT

(Hon'ble Judge Manoj Kumar Ohri)

CrI A (Criminal Appeal) No 1060 of 2018 **dated 27/11/2025**

V

Versus

State

SEXUAL ASSAULT ON MINOR

Indian Penal Code, 1860 Sec. 506, Sec. 376 - Code of Criminal Procedure, 1973 Sec. 428, Sec. 161, Sec. 164, Sec. 313 - Protection of Children from Sexual Offences Act, 2012 Sec. 6 - Sexual Assault on Minor - Appeal against conviction under IPC and POCSO Act - Victim alleged repeated sexual assault by stepfather and threats to mother - Medical report showed torn hymen but no fresh injury - Mother and teacher turned hostile during trial - Court held that testimony of child witness partly inconsistent but credible portions can be relied upon - Evidence of hostile witnesses examined carefully and corroborated by medical and circumstantial material - Court found conviction justified though sentence modified considering contradictions - Benefit of doubt not available - Appeal Dismissed

Law Point: Conviction under POCSO Act can rest on consistent and credible parts of testimony of child victim even if some witnesses turn hostile, provided medical and circumstantial evidence support offence.

Acts Referred:

Indian Penal Code, 1860 Sec. 506, Sec. 376

Code of Criminal Procedure, 1973 Sec. 428, Sec. 161, Sec. 164, Sec. 313

Protection of Children from Sexual Offences Act, 2012 Sec. 6

Counsel:

S S Ahluwalia, Rimpay Rohilla, Pradeep Gahalot, Bahuli Sharma, Ridhi Arora

JUDGEMENT

Manoj Kumar Ohri, J.- [1] The present appeal pertains to the judgment of conviction dated 29.05.2018 and order on sentence dated 03.07.2018 rendered by the Sessions Court in relation to the trial held in the context of FIR no.75/2015 registered under Sections 376(2)(f),(i),(j),(n)/506 IPC and 6 of POCSO Act at PS: Timarpur, Delhi.

While convicting the appellant under the aforesaid Sections, the Sessions Court also sentenced him to undergo Rigorous Imprisonment (RI) for ten years along with fine of Rs.5000/- and in default thereof, to undergo Simple Imprisonment (SI) for six months for the offence punishable under Section 6 POCSO Act; RI for two years along with fine of Rs.2000/- and in default thereof, SI for two months for the offence punishable under Section 376(2)(f)(i)(n) IPC and SI for two months for offence punishable under Section 506 IPC. It was also directed that all the sentences shall run concurrently. Benefit of Section 428 Cr.P.C. was also given to the appellant.

The sentence of the appellant was suspended by this Court on 30.11.2018.

[2] The investigation commenced with the recording of DD 20A on 29.01.2015 at 11.00 AM on information furnished by the school teacher where the victim was studying qua the victim being raped by her step father since many days. The victim's statement was recorded under Section 161 and 164 Cr.P.C. in which she claimed that she was reading in Class-III and her step father used to do badtameezi with her. She clarified that the appellant would come home drunk and after disrobing her, he would lie upon her. He also put his urinating part into her urinating part at the night time. She further alleged that this was done when her brother was sleeping and when her mother came to know he had also beaten her. The appellant had also threatened her not to disclose the incident or else he would cut her into pieces with a knife. She further claimed that she had informed her school teacher 'J' in school, her own mother and the mother of her friend 'S' and that the incident was repeatedly done on alternate day for past one month.

[3] The child victim's medical examination was carried out and on completion of the investigation, the charge-sheet came to be filed. Charges were framed under Sections 376(2)(f)(i)(n)/506 IPC and Section 6 POCSO Act, to which the appellant claimed not guilty and prayed for trial.

[4] In the present case, learned counsel for the appellant has assailed the impugned judgment by stating that the testimony of the victim does not inspire confidence as the same not only carries improvements, but in her cross-examination, she had categorically

stated that no galat kaam was ever done with her by her father. She further denied the case of the prosecution against the appellant, claiming it to be false implication done at the instance of her teacher 'J'.

It was next contended that de hors above, the medical examination of the child victim also does not reveal any recent sexual activity as no fresh injury was noted in spite of the allegation that the rape was repeatedly committed for past one month. It was also submitted that the FSL report also does not support as no semen could be detected on any of the exhibits. Lastly, it was contended that even the teacher 'J' as well as the mother who had been examined had also not fully supported the case of the prosecution.

[5] The submissions of the counsel for the appellant were contested by the learned APP as well as learned amicus, Ms Bahuli Sharma, Advocate appointed to represent the child victim. Learned Amicus contended that the present case needs to be considered in the socio-economic background of the child victim who had stated that her father had expired and that the appellant is her step father. The cross-examination of the victim also needs to be seen in the light of the fact that the same was carried out after one year after recording of her testimony. Further, the MLC of the child victim does record that her hymen was torn.

[6] As noted above, during the investigation, statement of the prosecutrix was recorded under Section 161 as well as Section 164 Cr.P.C. In the latter statement, she claimed that she had informed about the incident to her friend 'S' who then told about the incident to her mother and her mother advised her to tell about the incident to her teacher.

[7] The child victim was examined as PW-8. In her testimony, she stated that the appellant used to disrobe her and also did galat kaam. On being asked, she clarified that: mere Papa apna susu mere susu wali jagah per dalta tha . Further, she clarified that the act of rape was done during night and when her mother asked him to desist from his wrong acts, the appellant threatened her mother to the extent that he would kill her by knife in the night if she would disclose the same to anyone. She deposed that she had conveyed to her friend 'S' about the incident and thereafter to her teacher 'J'. She stated that prior to informing the school teacher, the appellant had done galat kaam with her for about one month. The teacher 'J' had called the police on 100 number and the teacher had also called her mother to school. She further stated that the appellant used to be under the influence of liquor and when she tried to raise alarm, the appellant used to gag her mouth. She also stated that first she informed about the incident to her friend 'S' who then told her mother, who advised her to speak to teacher about the incident. She further admitted that she had earlier visited the court and her statement was recorded, and identified her statement under Section 164 CrPC as Ex. PW8/A. She also identified the appellant.

[8] The aforesaid examination-in-chief was recorded on 04.03.2016. The child victim was cross-examined on 25.05.2017, in which she stated that her house consists of

one room and that the appellant did not commit any wrong act with her and in fact, she was instigated. She denied the suggestion that prior to one week from the present complaint, her father visited the school and her step father met with the teacher and there were heated arguments amongst a male teacher, teacher 'J' and her father. She stated that her father had never visited her school. She further denied that her family had strained relations with the family of 'S', to the contrary she stated that they did not even know each other. She admitted as correct the suggestion that she was annoyed with her father as he used to ask her strictly to focus on studies due to her bad grades and that is why she implicated him. She further claimed to be correct that she had made a complaint against her father at the instance of teacher 'J'. She further admitted to be correct that she had never made any complaint against her step-father either to her mother or to her friend 'S' prior to the present complaint. She also admitted to be correct that her marriage got solemnized after recording her statement on 04.03.2016.

[9] The child victim's mother was examined as PW-7. She stated that her earlier husband 'P' was dead and after her death, she remarried the appellant. The victim was born out of her earlier marriage. She turned hostile and stated that the behaviour of the appellant was good towards her children and he had not done anything wrong with the victim. She stated that the thumb impression of the victim and of her was taken forcibly. She was declared hostile and in cross-examination by the learned APP, she stated that the appellant had not done any wrong act with the victim at any point of time. She further denied any incident of threat being given to her. She was confronted with her earlier statement under Section 161 CrPC, exhibited as Ex. PW7/C, wherein it was stated otherwise. On the aspect that she was called to school, she admitted the same, but claimed to have no knowledge if any statement was given by the victim. She was again cross-examined after few days when she again denied all the suggestions pointing to the guilt of the appellant. She also did not identify the clothes of the child victim. In cross-examination, on behalf of the appellant, she admitted to be correct that her daughter had never told her if any wrong act was done by the appellant with her.

[10] The mother of the 'S' (the friend of the victim) was examined as PW- 9. She claimed that the victim told her daughter that her step father had committed wrong act with her. As she did not support further aspects of her statements, she was cross-examined by learned APP wherein she admitted to be correct that she had gone to school to pick up her daughter as the victim had told about the incident to her daughter in the school. The child victim had told her in school that her father used to remove her clothes and climb on top of her, and that her mother knew but she was threatened by the appellant. However, in cross-examination by the appellant, she stated that the victim had not stated about wrong act by the appellant either to her or to her teachers in her presence. She categorically deposed that she had not seen the child victim deposing against her father in the school about any wrong act. She was re-examined by APP as to which of her statement was correct, her examination-in-chief or her cross examination

on the aspect of her presence when the child told about the galat kaam to her teacher, to which the witness answered that the second version was correct.

[11] School teacher 'J' was examined as PW-2. She deposed that the child victim had told her that her father used to do badtamizi with her. Upon enquiry, she explained that removing her clothes, her father used to lie upon her. She informed the same incident to the Principal of school.

As she did not state about the act of penetration, she was cross-examined by the APP wherein she denied that the victim told about the insertion of penis into the vagina of the child victim. She also denied the suggestion that the mother of the child victim in her presence disclosed to the Principal that that two days before 04.02.2015, she had seen accused committing sexual assault on victim and when she objected, the appellant beat the mother of the victim and also threatened to kill her. She was confronted with her statement under Section 161 CrPC, exhibited as PW2/A, with respect to her various deviations.

[12] The Principal of the school was examined as PW-3. He deposed that on 29.01.2015, the victim had informed the teacher 'J' that her father used to commit rape with her. He deposed that he had also inquired from the victim and she narrated the same thing to him, on which he called the mother of the victim in the school. He also proved the age of the child victim through the admission/withdrawal register (Ex.PW3/A), as per which the victim was admitted in the school on 06.04.2013 in 2nd Class and her date of birth was 04.11.2005. In cross-examination, nothing which can be extracted except that while he was visiting the class room, the victim was studying in Class-III/B.

[13] That brings us to the medical examination report of the child victim (Ex. PW4/A), which was proved through the testimony of Dr Kamini Singhal (PW-4) and Dr Sony Sohane (PW-6). PW-6 stated that on inspection of child victim's genital area, her hymen was torn, and vaginal discharge was present. However, the appellant had already taken bath and changed clothes since last incident of sexual assault.

In cross-examination, she stated that though she did not mention that the hymen was old torn, but on examination, she found that the hymen was old torn. There was no sign of fresh injury and the hymen torn suggested an old tear. She denied the suggestion that she did not medically examine the victim and the medical report was prepared at the dictation of police. It was also denied that she was deposing falsely.

[14] As per the FSL report, semen was not detected on any of the exhibits.

[15] In his statement under Section 313 CrPC, the appellant claimed false implication, He said that the victim used to go to school early at 6.30 AM whereas her school started at 7.30 AM, due to which he had an altercation with 'J' in the school office. Since he repeatedly cautioned and warned the victim who was not focussing on studies, 'J' used this resentment to falsely implicate him.

[16] It is trite law that the evidence of prosecution witnesses who turn hostile cannot be washed off or rejected in toto. The evidence merits closer scrutiny and the portion of

the evidence which is consistent with the case of the prosecution or defence can be relied upon. After employing caution and separating the truth from the exaggeration, lies and improvements, the Court can come to the conclusion that the residuary evidence is sufficient to secure a conviction. Whether the testimony of the hostile witness can be relied upon stands answered by the Supreme Court in *Selvamani v. State Rep. by the Inspector of Police*, 2024 SCC OnLine SC 837 wherein it has been held as under:-

10. This Court, in the case of *C. Muniappan and Others v. State of Tamil Nadu*,¹⁰ has observed thus:

81. It is settled legal proposition that: (Khujji case, SCC p. 635, para 6)

'6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'

82. In *State of U.P. v. Ramesh Prasad Misra*, 1996 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, 2002 7 SCC 543], *Gagan Kanojia v. State of Punjab*, 2006 13 SCC 567 (2010) 9: 2010 INSC 553 SCC 516], *Radha Mohan Singh v. State of U.P.*, 2006 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, 2007 13 SCC 360] and *Subbu Singh v. State*, 2009 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the

details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide **Sohrab v. State of M.P.**, 1972 3 SCC 751, **State of U.P. v. M.K. Anthony**, 1985 1 SCC 505, **BharwadaBhoginbhaiHirjibhai v. State of Gujarat**, 1983 3 SCC 217, **State of Rajasthan v. Om Prakash**, 2007 12 SCC 381, **Prithu v. State of H.P.**, 2009 11 SCC 588, **State of U.P. v. Santosh Kumar**, 2009 9 SCC 626 and **State v. Saravanan**, 2008 17 SCC 587

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.

[17] In the present case, the child victim has, from her initial statement to the police on 29.01.2015, stated that the appellant used to commit rape upon her at night since last month on alternate days. She has again described the act of penetration in her statement under Section 164 CrPC recorded on the next day, and even in her examination-in-chief, recorded on 04.03.2016. Not just the act, even other aspects of her account also remained consistent through these three statements. However, in her cross-examination, which was conducted on 25.05.2017, i.e. almost 1 year and 3 months after examination-in-chief, she turned hostile and herself stated that no galat kaam was committed with her. She admitted that her marriage had been solemnised after her examination-in-chief.

[18] Pertinently, though during cross-examination the victim did not speak in line with her examination in chief, she also did not admit the suggestion given by defence that a week prior to the complaint, the appellant met 'J'- the school teacher and had an altercation with her. Interestingly, the appellant had taken the defence that he had an alteration with the teacher 'J', who got him falsely implicated. In fact, the child victim deposed that the appellant never even visited her school, thus, taking the wind out of the appellant's sail. She also denied any strains between her friend 'S' and her family. Thus, overall, she has remained consistent and the cross-examination appears to be a lone aberration. Her entire testimony cannot be effaced from the record only on this account. In this regard, it has been held by the Supreme Court in **Khujji v. State of M.P.**, 1991 3 SCC 627 that:-

6. ...But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court **Bhagwan Singh v. State of Haryana**, 1976 1 SCC 389 [1976 SCC (Cri) 7: (1976) 2 SCR 921] , **Rabindra Kumar Dey v. State of Orissa**, 1976 4 SCC 233 [1976 SCC (Cri) 566: AIR 1977 SC 170] and **Syad Akbar v. State of Karnataka**, 1980 1 SCC 30 [1980 SCC (Cri) 59: (1980) 1 SCR 95] that the

evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

7. ...The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination-in-chief. Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor is his statement that he had come to purchase vegetables unacceptable. We do not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness who had no cause to give false evidence against the appellant and his companions. We are, therefore, not impressed by the reasons which weighed with the trial court for rejecting his evidence. We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.

[19] The teacher 'J', examined as PW2, has corroborated the child victim's deposition to the extent of the victim telling her that the appellant committed badtameezi with her, which she described as removing his clothes and laying down on top of her. However, she turned hostile on the aspect of stating about penetration. The Principal, examined as PW3, has also stated that 'J' told her that the appellant used to committed rape on the victim. Thereafter, the Principal himself interacted with the victim who narrated the same thing to him. The same fact was also narrated to him by the mother of the victim.

[20] Support for the prosecution case can also be found in the MLC of the child victim, prepared on the same day and hence a contemporaneous document, which records history of sexual assault by the father. In medical examination, the child victim's hymen was found torn. Since the last incident was a day before the examination, the clothes seized were not what was worn at the time of incident, and she had also taken a bath, which would explain the negative FSL report.

[21] On an overall view of the facts and circumstances, it appears that, after subjecting the testimony of the prosecutrix to close scrutiny, the residuary evidence which remains after dealing with the version where she turns hostile, accompanied by the residuary evidence of PW2 and PW3, and corroborated by the MLC, is enough to uphold the conviction.

[22] Consequently, the appeal is dismissed and the impugned judgment convicting the appellant, as well as the order on sentence, are upheld.

[23] The appellant's bail bonds are cancelled and sureties discharged. He is directed to be taken into custody to serve the remainder of his sentence.

[24] Copy of the judgment be communicated to the Trial Court, as well as concerned Jail Superintendent for information and necessary compliance.

[25] Before parting, this Court records its appreciation for the valuable assistance rendered by Ms. Bahuli Sharma, learned Amicus Curiae (pro bono)

2026(1)PRC57

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge Sanjay Dhar)

Bail Application No 116 of 2025, 115 of 2025, 117 of 2025 **dated 26/11/2025**

Basharat Ahmad Shora & Ors

Versus

Ut of J&k

POCSO BAIL

Protection of Children from Sexual Offences Act, 2012 Sec. 29, Sec. 9, Sec. 30, Sec. 7, Sec. 5, Sec. 4, Sec. 3 - Bharatiya Nyaya Sanhita, 2023 Sec. 137, Sec. 64 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 183 - POCSO Bail - Joint bail petitions by accused facing trial under POCSO Act and BNS for sexual assault on minor - Victim recovered and her statement recorded alleging repeated assault by several persons - Petitioners contended that victim and parents retracted statements during trial and most evidence is corroborative - Prosecution opposed citing gravity and incomplete trial - Court held successive bail applications maintainable before High Court but observed serious nature of charges and ongoing trial with major witnesses yet to be examined - Found no change in circumstances since earlier rejection - Bail declined - Bail Rejected

Law Point: In offences under POCSO Act involving grave allegations of repeated sexual assault, bail cannot be granted merely on partial hostile testimony when trial is incomplete and seriousness of charge persists

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 Sec. 29, Sec. 9, Sec. 30, Sec. 7, Sec. 5, Sec. 4, Sec. 3

Bharatiya Nyaya Sanhita, 2023 Sec. 137, Sec. 64

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 183

Counsel:

S T Hussain (Senior Advocate), Nida Nazir, Danish Majid, Syed Ahra, Mehjabeen Gulzar, Monisa Manzoor, Mohsin-Ul-Showkat Qadiri, Maha Jabeen

JUDGEMENT

Sanjay Dhar, J.- [1] By this common order, afore-titled three bail applications filed by accused Basharat Ahmad Shora, Mohammad Ashraf Sheikh and Chaman Lal, are proposed to be disposed of. The petitioners are facing trial in a case arising out of FIR No.45/2024 for offences under Section 137(2), 64 of BNS and Section 3/4 of POCSO Act registered with Police Station, M. R. Gunj, before the Court of Special Judge POCSO Cases, Srinagar.

[2] The facts leading to the filing of the present bail applications are that on 11.11.2024, Police Post, Urdu Bazar, Srinagar, received a written complaint from the father of the victim Ms. X, alleging that his daughter is missing from home since 08.11.2024. On the basis of this complaint, FIR No.45/2024 for offence under Section 137(2) of BNS was registered with Police Station, M. R. Gunj, Srinagar, and investigation of the case was set into motion. As per the school record, date of birth of Ms. X was found to be 25.11.2008. During the course of investigation, Ms. X was recovered by her maternal uncle on 17.11.2024 from Sunday market Lal Chowk, Srinagar. During the preliminary enquiry of Ms. X, it was found that she had been forcibly raped by four different persons at four different places on four different dates. Ms. X was subjected to medical examination at Government Lalladed Hospital, Srinagar. Her hymen was found ruptured. Some samples including her DNA sample and vaginal swabs were collected by the doctors, whereafter she was handed over to her parents by the Child Welfare Committee, Srinagar. The statement of Ms. X under Section 183 of BNSS was recorded by the Judicial Magistrate.

[3] In her statement recorded under Section 183 of BNSS, Ms. X narrated that she had left from her home with her friends Ashu and Junaid on Ashu's bike and they roamed in Srinagar City and went to Nishat. When it got late, they went to Ashu's house who lives in Rainawari, Srinagar. She was scolded by the mother of Ashu for having come to their home. On next day, Ashu dropped her near Zero Bridge, Srinagar. She further stated that she remained in SMHS Hospital, Srinagar, for two nights outside the ward whereafter she went to Sunday market, Srinagar, where she met petitioner Chaman Lal who took her to his hotel where he committed forcible sex upon her. Ms. X further stated that she stayed with Chaman Lal for two days whereafter he dropped her at SMHS Hospital where she stayed for another night. She again went to petitioner Chaman Lal who dropped her at Jahangir Chowk where she met an uncle who offered to take her to her destination. Ms. X boarded his car and he took her to a hotel near Zero Bridge, Srinagar, where he forcibly committed rape upon her. Ms. X stated that she does not know the name of the said uncle. Thereafter next morning, she went to Sunday market and was roaming over there where she was spotted by her uncle Manzoor Khan

and her cousin Iman Khan, who took her to home. She further stated that before she met the uncle at Jahangir Chowk who had forcible sex with her in the hotel near Zero Bride, Srinagar, in between she had gone to Makhdoom Sahab Shrine in a car with a person who abused her but did not get physical with her. She further stated that at Makhdoom Sahab, she met an uncle whose name she does not know, who gave his phone number to her and promised to give her job. The said uncle took her in a car and forced her to take whisky. Ms. X turned heavy and when she opened her eyes, she found herself in the car of said person near Eidgah but she does not know whether or not the said person had sex with her. From there she went with Ashu to his Karkhana near Makhdoom Sahib where she stayed with him for night where Ashu had forcible sex with her and on the next day, Ashu left her at Zero Bridge, Srinagar. She further stated that now she wants stern action against Ashu and the two uncles, one who met her at Makhdoom Sahib and one who had forcible sex with her in hotel near Zero Bridge, Srinagar.

[4] During the course of investigation, the person, namely, Ashu, was identified as petitioner Mohammad Ashraf Sheikh and he was arrested on 18.11.2024. Another person, namely, Chaman was identified as petitioner Chaman Lal who was arrested on 24.11.2024 and third person was identified as petitioner Basharat Ahmad Shora. He was arrested on 29.11.2024. The test identification parade of petitioners Chaman Lal and Mohammad Ashraf Sheikh was conducted on 26.11.2024 in presence of Executive Magistrate, 1st Class, Khanyar, before independent witnesses. Similarly, the test identification parade of petitioner Basharat Ahmad Shora was conducted on 02.12.2024 in the presence of Executive Magistrate, 1st Class, Khanyar, in presence of independent witnesses and employees of Child Welfare Committee. The potency test of all the three petitioners was conducted and during the course of investigation, DNA samples of the petitioners as well as DNA sample of Ms. X were collected for their analysis and expert opinion. CCTV footage was asked from the hotel where the victim was alleged to have been subjected to sexual assault and Call Data Records of all the petitioners were also collected. It was found that the petitioners were present at the locations where the occurrence had taken place at the relevant time. The bank details of petitioner Basharat Ahmad Shora were also sought and it was found that he had paid certain amount to the hotel manager where the occurrence had taken place.

[5] Based upon the statement of the victim and the statements of other witnesses, offences under Section 137(2) and 64 of BNS and 3/4 POCSO Act were found established against the petitioner and, accordingly, the challan was presented against them before the Court of Special Judge POCSO Cases, Srinagar.

[6] Further investigation of the case was conducted, during the course of which fourth accused, namely, Nissar Ahmad Joo was arrested on 8th May, 2025. His test identification parade was conducted in presence of the Executive Magistrate, 1st Class, Khanyar. He was also subjected to potency test and his DNA samples were also collected for their expert analysis. Call Data Records of the said accused were also collected. After investigation, offences under Section 137(2), 64 of BNS and 3/4 of

POCSO Act were also found established against the said accused and the supplementary challan was laid against him before the Special Court POCSO Cases, Srinagar.

[7] After the presentation of challan, the learned Special Court, vide its order dated 10.02.2025 framed charges for offences under Section 137(2), 64 of BNS and Section 3/4 POCSO Act against the petitioners whereas after the presentation of supplementary challan, similar charges were framed against the fourth accused, namely, Nissar Ahmad Joo, vide order dated 17.07.2025 passed by the learned Special Court.

[8] It appears that during the trial of the case, statements of Ms. X and her parents have already been recorded by the trial court. It further appears that the learned trial court has, vide its orders dated 17.06.2025, dismissed the bail applications of the petitioners on the ground that out of 38 witnesses, only three prosecution witnesses have been examined and, as such, the concession of bail cannot be extended to the petitioners at this stage.

[9] The petitioners have sought bail on the grounds that the victim and her parents, while making their statements during trial of the case, have not supported the prosecution case and, as such, the petitioners are entitled to concession of bail. It has been further contended that the petitioners are innocent persons having no direct or indirect link with the alleged crime. It has been contended that the learned trial court has casually approached the bail applications of the petitioners and rejected the same without any cogent reason. It has been contended that there is no statutory bar to grant of bail in offences under the POCSO Act and the presumption of guilt against the accused can always be rebutted during trial of the case. It has been contended that the material witnesses have already been examined by the prosecution and the other evidence which has been collected by the Investigating Agency is only corroborative in nature and even if the said evidence is read against the petitioners, they cannot be convicted of the offences for which they have been charged.

[10] The respondent-State has contested the bail applications by filing its reply. In its reply, besides narrating the allegations made in the charge sheet against the petitioners, the respondent-State has submitted that the petitioners are involved in the offences of severe nature which fall within the category of rarest of rare cases, therefore, their release on bail at this juncture would have adverse impact on the public interest. It has been contended that if the petitioners are enlarged on bail, it would be a serious blow to the honour, esteem and dignity of the victim, particularly when there is cogent material on record against the petitioners. It has been further contended that the offences for which the petitioners stand charged carry a maximum punishment of life imprisonment and on this ground also, they are not entitled to concession of bail. It has also been contended that most of the prosecution witnesses are yet to be examined in the case and it would be premature to enlarge the petitioners on bail at this stage. It has further been contended that there has been no change of circumstances since the dismissal of bail applications of the petitioners by the learned Special Judge and, therefore, the petitioners cannot maintain the present bail applications.

[11] I have heard learned counsel for the parties and perused record of the case.

[12] Before coming to the other aspects of the case, it is necessary to deal with the contention of the respondent that the instant bail applications are not maintainable because the earlier bail applications of the petitioners, after filing of the charge sheet, stand rejected by the trial court and, as such, there is no change of circumstances.

[13] The question that arises for consideration is whether or not successive bail application will lie before this Court. The law on this issue is very clear that if an earlier application was rejected by an inferior court, the superior court can always entertain the successive bail application. In this behalf, I am supported by the ratio laid down by the Supreme Court in the case titled **Gurcharan Singh & Ors vs. State (Delhi Administration)**, 1978 AIR(SC) 179 which has been followed by the Bombay High Court in the case of **Devi Das Raghu Nath Naik v. State**, 1987 3 Crimes(HC) 363. Thus, the rejection of a bail application by Sessions Court does not operate as a bar for the High Court in entertaining a similar application under Section 439 Cr. P. C/483 BNSS on the same facts and for the same offence.

[14] Having held that the instant bail applications are maintainable, let us now proceed to deal with the merits of these applications. So far as the principles governing grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and this Court. The principles laid down in these judicial precedents can be summarized as under:

- (i) The gravity of the offence and the nature of of the accusation including the frivolity of punishment in a case of conviction;
- (ii) The position and status of the accused vis-à-vis the victim and the witnesses;
- (iii) The likelihood of the accused fleeing from justice;
- (iv) The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;
- (v) The possibility of repetition of the offence;
- (vi) Prima facie satisfaction of the Court in support of the charge including frivolity of the charge;
- (vii) Stage of the investigation;
- (viii) Larger interest of the public or the State;

[15] When it comes to offences punishable under a special enactment, such as, POCSO Act, the provisions contained in Sections 29 and 30 of the said Act are also to be borne in mind. Section 29 raises a presumption of commission of an offence under Sections 3, 5, 7 and 9 of the POCSO Act against a person who is prosecuted for commission of the said offence, unless contrary is proved. Similarly, Section 30 raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has a right to prove the fact that he had no such mental state.

[16] Coming to the facts of the present case. It is correct that involvement of the petitioners in the alleged crime has been found after the investigation of the case and charges against them have also been framed. Thus, there is a statutory presumption of guilt operating against them. However, as already stated, the statutory presumption of guilt, which is triggered by operation of Section 29 of the POCSO Act, is rebuttable in nature. Therefore, it is open to an accused to bring to the notice of the Court the material or lack of it to show that the foundational facts giving rise to the presumption are prima facie not established in the case or that evidence led during the trial of the case rebuts the presumption operating against him. Thus, an accused will be well within his rights to persuade the Court on the basis of the circumstances that may be established during cross-examination of the witnesses conducted during trial of the case or on the basis of defence evidence, that the presumption of guilt operating against him in view of the provisions contained in Section 29 of the POCSO Act stands rebutted. It is also to be borne in mind that there is no statutory bar to grant of bail in a case involving offences under the POCSO Act and each case has to be considered on its peculiar facts and circumstances.

[17] In the instant case, if we have a look at the statement of the victim, Ms. X, recorded during trial of the case, she has stated that petitioner Mohammad Ashraf Sheikh is known to her whereas she cannot identify the other two petitioners. She has further stated that she had gone to Makhdoom Sahib where she met petitioner Mohammad Ashraf Sheikh who was accompanied by his friend. She further stated that, in fact, one uncle committed forcible act upon her. The said uncle made her to take whisky and it was on 29th November, 2024, that the said person made her to take whisky in his car near Jahangir Chowk and thereafter what happened to her, she does not know but the said person went physical with her. She further stated that during the day time, she went to Sunday market where she met her uncle Manzoor Khan who took her to her home and then to Police Station. She further stated that thereafter they have been looking for the uncle type person but he could not be traced. She also stated that the police subjected her to medical examination in LD hospital.

[18] The witness (Ms. X) was declared hostile and was cross-examined by the APP. During her cross-examination, she admitted the contents of the statement made by her under Section 183 of BNSS to the extent that some uncle type person had committed wrong with her. She categorically stated that she does not know petitioner Chaman Lal. She denied that petitioner Chaman Lal had committed sexual intercourse with her. She further denied that petitioner Basharat Ahmad had paid her Rs.4000/-. She denied having identified the petitioners in the presence of the Executive Magistrate. She admitted that her mother has purchased a new house in December, 2024 in Zainakadal but she does not know wherefrom they got finances for the said house. She denied making the statement under any pressure or inducement.

[19] The mother of the victim, in her cross-examination, has stated that her daughter told her that she was taken away by some uncle in his car and that she has mentioned the

names of the petitioners in her statement only at the instance of the police. She further stated that her daughter told her that only an uncle had committed wrong with her and nobody else had done it.

[20] The father of the victim, while making his statement during trial of the case, also stated that the names of the petitioners mentioned by him in his statement under Section 183 of BNSS have been narrated by him before the Magistrate on the asking of the police and that he does not know the petitioners.

[21] From the foregoing narration of the statements of the victim and her parents, prima facie, it appears that they have not supported the prosecution version of the case. In fact, these witnesses have not stated anything incriminating against the petitioners. During the hearing of the instant bail applications, the victim and her mother, in response to the notice issued by this Court, put in their appearance before the Court and expressed their no objection if bail is granted to the petitioners.

[22] The learned Senior AAG, appearing on behalf of the respondent, has vehemently contended that merely because the victim has turned hostile and has not supported the prosecution case it cannot be stated that the petitioners have been able to rebut the presumption of guilt which has triggered against them in terms of Section 29 of the POCSO Act. He has contended that the statement of a hostile witness cannot be thrown out as a whole and at the time of final decision of the case, it is open to the learned trial court to use those portions of the statement of the victim which will be found reliable by the trial court. To support his contention, the learned Senior AAG has placed reliance upon the judgment of the Supreme Court in the case of K. P. Tamilmaran vs. State, 2025 SCC OnLine SC 958. He has also placed reliance upon the judgment of Punjab and Haryana High Court in the case of Subash Chander vs. State of Haryana, 2021 SCC OnLine P&H 1531, to press home his contention that even in the absence of support from the victim, the bail cannot be granted to an accused in a heinous offence like an offence of rape of a minor victim.

[23] So far as the legal position that statement of a hostile witness cannot be thrown out as a whole is concerned, there cannot be any dispute with the said legal position and it can also not be disputed that in a heinous offence of rape upon a minor victim the Court generally acts with great circumspection before enlarging the accused on bail. However, situation in the present case is somewhat different. The victim has categorically denied involvement of the petitioners in the alleged crime. There is hardly anything in her cross-examination that would, prima facie, go on to show that she has stated anything in support of the prosecution version.

[24] The DNA samples of the petitioners and DNA sample from the vaginal swab of the victim have been subjected to test analysis. The report of the expert reveals that no foreign DNA was detected in the sample. It has also been reported that DNA profiles generated from samples marked as B-1556-24, B-1561/24 confirms that the source of sample is human female and profiles are consistent with each other and belong to same individual (female). The medical report further suggests that there were no marks of

violence on the private parts of the victim. There was no evidence of recent sexual intercourse with the victim.

[25] In the face of aforesaid scientific evidence on record coupled with the nature of statement that has been made by the victim during the course of trial, it can safely be stated that the petitioners have been able to rebut the presumption of guilt which had triggered against them upon framing of charges under Section 3 and 4 of the POCSO Act.

[26] It appears that the learned trial court has, while rejecting the bail applications of the petitioners, failed even to take note of the statements of the victim and her parents recorded during trial of the case. The omission on the part of the learned trial court to do so has resulted in passing of the orders rejecting the bail applications of the petitioners which are not sustainable in law.

[27] In view of the nature of evidence available against the petitioners and without commenting upon the merits of the case, it is clear that during trial of the case, the statutory presumption of guilt operating against the petitioners in terms of Section 29 of the POCSO Act stands rebutted. The petitioners have been in custody for the last one years. The statements of material witnesses have already been recorded and even if the petitioners are released on bail at this stage, there is no chance of the prosecution witnesses getting tampered because the victim and her near relations have already been examined during trial of the case.

[28] Merely because the petitioners are facing trial for heinous offences which entail punishment extending upto life imprisonment is not a good enough reason to deny concession of bail to them when their, prima facie, involvement in the alleged crime is highly doubtful. The concession of bail to the petitioners, in these circumstances, cannot be denied just to teach them a lesson or to satisfy the conscience of the society as it would amount to inflicting pre-trial punishment upon them, which is impermissible in law.

[29] For the foregoing reasons, the petitions are allowed and the petitioners are admitted to bail subject to the following conditions:

(i) That they shall furnish personal bonds in the amount of Rs.50,000/ each with two sureties each of the like amount to the satisfaction of the learned trial court;

(ii) That they shall appear before the learned trial court on each and every date of hearing till conclusion of the trial.

(iii) That they shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;

(iv) That they shall not intimidate or tamper with prosecution witnesses/evidence.

[30] Observations made hereinabove shall remain confined to the decision of the instant applications only and shall not be construed as expression of an opinion on the merits of the case.

[31] The bail applications shall stand disposed of

2026(1)PRC65

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge Shivashankar Amarannavar)

Criminal Petition No 3643 of 2025, 2810 of 2025, 3827 of 2025, 7469 of 2025
dated 25/11/2025

Srinivas C @ Pagal Seena S/o Chaluvaraju; Joseph S/o Michal; Syed Shabuddin S/o Nasir Ahammad; Soumya D/o Dodda Thimmaiah; Manoj R @ Tale S/o Ramakrishna

Versus

State By Chandra Layout Police Station, Bengaluru; Manjula C W/o Lankesh

BAIL REJECTION

Bharatiya Nyaya Sanhita, 2023 Sec. 190, Sec. 70, Sec. 140, Sec. 238, Sec. 118, Sec. 74, Sec. 308, Sec. 127, Sec. 351, Sec. 115, Sec. 16, Sec. 352, Sec. 319, Sec. 329 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 183, Sec. 483 - Bail Rejection - Petitions filed under Bharatiya Nagarik Suraksha Sanhita Sec. 483 by accused seeking bail for offences under Bharatiya Nyaya Sanhita Secs. 61(2), 140(2), 115(2), 118, 70(1), 74, 238, 127(3), 319(2), 352, 351(2), 308(2), 329(4) - Petitioners contended that charge sheet filed, custodial interrogation not needed and others similarly placed got bail - Respondent contended that accused are rowdy sheeters with serious overt acts of kidnapping, harassment and criminal antecedents - Materials indicated heinous acts of physical torture to victims - Accused Nos.1,2,4 and 6 found with grave role and criminal background - Accused No.3 being a woman with no antecedents granted bail with conditions - Bail denied to others - Petitions partly allowed

Law Point: Bail can be granted only when accused has no criminal antecedents and offence lacks gravity - Female accused without prior record may be granted bail subject to strict conditions even when co-accused face rejection.

Acts Referred:

Bharatiya Nyaya Sanhita, 2023 Sec. 190, Sec. 70, Sec. 140, Sec. 238, Sec. 118, Sec. 74, Sec. 308, Sec. 127, Sec. 351, Sec. 115, Sec. 16, Sec. 352, Sec. 319, Sec. 329

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 183, Sec. 483

Counsel:

Narayanaswamy K N, Pushpalatha B

JUDGEMENT

Shivashankar Amarannavar, J.- [1] Criminal petition No.3643/2025 is filed by accused No.2, Criminal petition No.2810/2025 is filed by accused Nos.1 and 4, Criminal petition No.3827/2025 is filed by accused No.3 and Criminal petition No.7469/2025 is filed by accused No.6. All four petitions are filed under Section 483 of Bharatiya Nagrika Suraksha Sanhita, 2023 praying to grant bail in S.C.No.1528/2025 (arising out

of Crime No.440/2024 of Chandra Layout Police Station) registered for offences punishable under Sections 61(2), 140(2), 115(2), 118, 70(1), 74, 238, 127(3), 319(2), 352, 351(2), 308(2), 329(4) read with Section 190 of Bharatiya Nyaya Sanhita, 2023, pending on the file of LIII Additional City Civil and Sessions Judge, Bengaluru.

[2] Heard learned counsel for petitioners and learned Additional State Public Prosecutor for respondent - State.

[3] Learned counsel for petitioners would contend that, accused Nos.7 to 13 have been granted bail by this Court. The charge sheet has been filed and the petitioners are in custody since 18.08.2024 and therefore, they are not required for custodial interrogation. The statements of witnesses have been recorded under Section 183 of BNSS. In the wound certificate, there is mention that, victim was taken to hospital by the Police. But in her statement, she has stated that, on her own she went to the hospital. C.W.2 and C.W.3 in their statement under Section 183 of BNSS have stated that, they have been assaulted, but there is no wound certificate of them. C.W.2 has stated that, he has filed complaint on 15.08.2024 and C.W.4 on 14.08.2024. But no such complaints are forthcoming. The petitioners are in custody since one year three months and the charge sheet contains eight four (84) witnesses. There is no evidence for offence under Section 70(1) of BNS. There is a personal vengeance of the complainant and Police against the petitioners and therefore, a false case has been foisted against them. With these, he prayed to allow the petitions.

[4] Per contra, learned Additional State Public Prosecutor for respondent would contend that, the serious overtacts are alleged against the accused persons. The accused persons have kidnapped C.W.1 to C.W.4 and tortured and harassed them and committed offences alleged against them. Accused Nos.1, 2 and 6 are rowdy sheeters and they are having criminal antecedents. The accused persons who have been granted bail are again involved in commission of offences. If the petitioners are granted bail, there are chances of threatening the prosecution witnesses and committing similar offence. With these, she prayed for dismissal of the petitions.

[5] Having heard the learned counsels appearing for parties, the Court has perused charge sheet and other materials placed on record.

[6] On 12.08.2024, C.W.2, C.W.3 and C.W.4 were kidnapped by accused Nos.1, 2, 4, 5, 9, 10, 13, 14 and 15 and they were tortured. C.W.1 to C.W.4 have been kidnapped by the petitioners on the allegation that they are thieves and they were harassed to return the theft articles. Even though, C.W.1 has not stated any act of sexual assault on her by the accused persons in her statement under Section 183 of BNSS, but the charge sheet allegation contains that, the accused persons put chilli powder on her private part and also on anus and put other articles in her private part. The accusation made against the petitioners/accused Nos.1, 2, 3, 4 and 6 is heinous physical harassment to C.W.1 to C.W.4. Accused Nos.1, 2 and 6 are rowdy sheeters involved in commission of different offences. There is a serious overtact is alleged against accused No.4. Learned Additional

State Public Prosecutor has submitted that, accused No.4 is also a rowdy sheeter, but she is not having any documents at present.

[7] Considering all the above aspects, accused Nos.1, 2, 4 and 6 are not entitled for grant of bail.

[8] Accused No.3 is a lady. She is not having any criminal antecedents. Even though, she is having allegations of harassment and ill-treatment on the victims, she is entitled for grant of bail with conditions. In the result, the following;

ORDER

a) Criminal Petition No.3643/2025, Criminal Petition No.2810/2025 are Criminal Petition No.7469/2025 are **dismissed**.

b) Criminal Petition No.3827/2025 is **allowed**. The petitioner/accused No.3 is granted bail in S.C.No.1528/2025 (arising out of Crime No.440/2024 of Chandra Layout Police Station) pending on the file of LIII Additional City Civil and Sessions Judge, Bengaluru, subject to following conditions:

i) The petitioner/accused No.3 shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with one surety for the like-sum to the satisfaction of the trial Court.

ii) The petitioner/accused No.3 shall not tamper the prosecution witnesses either directly or indirectly.

iii) The petitioner/accused No.3 shall appear before the trial Court on all dates of hearing unless exempted by the Court and cooperate for speedy disposal of the case.

iv) The petitioner/accused No.3 shall not involve in commission of any offence. If she involved in commission of any offence, the prosecution is at liberty to seek cancellation of bail granted to her

2026(1)PRC67

GAUHATI HIGH COURT

[From ITANAGAR BENCH]

(Hon'ble Judge Susmita Phukan Khaund)

W P (C) (Writ Petition (Civil)) No 195 of 2025 **dated 21/11/2025**

Bulang Marik

Versus

State of Ap and Ors; Commissioner of Home; Deputy Secretary (Home); Under Secretary (Home); Director General of Police; Commandant

SUSPENSION REVIEW VALIDITY

Indian Penal Code, 1860 Sec. 373 - Central Civil Services (Classification, Control and Appeal) Rules, 1965 Rule 10 - Immoral Traffic (Prevention) Act, 1956 Sec. 6, Sec. 5,

Sec. 4, Sec. 3 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 8, Sec. 12 - Suspension Review Validity - Petition filed seeking quashing of suspension order and reinstatement - Contention that review not held within ninety days under Rule 10(7) of CCS (CCA) Rules - Petitioner arrested in criminal case under IPC and POCSO Act - Released on bail and intimation received later by department - Review committee constituted within ninety days from date of intimation - Held that period of ninety days to be computed from date authority receives intimation of release - Review conducted within permissible time - Suspension validly extended - No illegality found in review or extension - Petition Dismissed

Law Point: Under Rule 10(7) of CCS (CCA) Rules, ninety-day period for review of suspension begins from date of intimation of release from detention to appointing authority, not from date of suspension.

Acts Referred:

Indian Penal Code, 1860 Sec. 373

Central Civil Services (Classification, Control and Appeal) Rules, 1965 Rule 10

Immoral Traffic (Prevention) Act, 1956 Sec. 6, Sec. 5, Sec. 4, Sec. 3

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 8, Sec. 12

Counsel:

Marto Kato, Tony Meto, Kamin Teri, Licha Rakap, M Tanga, Yasmin Gao, Mepe Ete, Nyali Sora

JUDGEMENT

Susmita Phukan Khaund, J.- [1] Heard learned counsel M. Kato for the petitioner and learned Senior Government Advocate Mr. S. Tapin for the respondent.

[2] The petitioner Shri Bulang Marik has filed this petition to set aside and quash the impugned suspension order No. HOME-11011/11/2024/865 dated 02.06.2024 issued by the respondent No. 1 and to direct the respondent authorities to reinstate the service of the petitioner, from the date when he was suspended, and to direct the respondents to allow the consequential service benefits.

[3] It is contended that the suspension order of the petitioner was not reviewed within 90 (Ninety) days as the petitioner was in custody. Thereafter, the petitioner was granted interim bail which was made absolute on 18.01.2025. An RTI application was filed to find out why the suspension order was not reviewed even after 90 (Ninety) days. It is submitted that this writ petition was filed on 01.05.2025 and thereafter, the suspension order was reviewed when notice was issued in connection with this petition.

[4] It is contended that the suspension order was not reviewed for more than 270 (Two Hundred and Seventy) days from the date of suspension of the petitioner. However, it is contended that review was pending from the initial date of suspension, for a total period of 366 (Three Hundred and Sixty Six) days. Thus, the initial order is

required to be interfered with, and the petitioner is to be reinstated as per Rule 10 Sub-Rule 6 and 7 of the proviso to Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules {CCS (CCA) Rules for short}.

[5] The petitioner has relied on the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhury-Versus-Union of India through its Secretary and Another**, 2015 7 SCC 291 and the decision of this Court in **Santosh Kumarversus-Union of India & ors**, 2025 3 GauLT 485.

[6] It is further averred that no memorandum of charge has been served to the petitioner and the petitioner is still under suspension.

[7] Per contra, learned Government Advocate laid stress in his argument, that the pertinent point is whence 90 (Ninety) days starts running, from the date of suspension. Learned Government Advocate has again reiterated the proviso to Rule 10(7) of the CCS Rules and has highlighted the word 'deemed suspension'.

Rule 10 (7) and the proviso to Rule 10(7) reads:-

[(7) An order of suspension made or deemed to have been made under subrule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date of Govern- ment servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

[8] Stressing on the word whichever is later, it is submitted that it has been clearly mentioned in paragraph 5 of the affidavit-in-opposition of respondents No. 1, 2, 3 and 4 that the petitioner was released on bail vide order dated 18.01.2025 and this fact was communicated to the authority vide letter No. PHQ/PB/DP-46/2024 dated 03.03.2025 from the Police Headquarters that the petitioner was released on bail vide order dated 18.01.2025. A copy of the communication is marked as Annexure-1 of the counter-affidavit.

[9] As the suspension of the petitioner was reviewed on 29.05.2025, evidently, the window of 90 (Ninety) days was not exhausted if the days are calculated from 03.03.2025 as 90 (Ninety) days expires only on 01.06.2025.

[10] It is further submitted that paragraph 6 of the counter affidavit clearly reflects that an intimation was received that the petitioner was released from custody and a review committee was constituted vide HOME-11011/12/2024 dated 28.05.2025 under the Chairmanship of the Chief Secretary, Government of Arunachal Pradesh. Immediately, a review committee on 29.05.2025, after consideration of the material facts and gravity of the offence, recommended extension of suspension to 180 (One Hundred and Eighty) days, w.e.f. 02.06.2025 and the order was issued on 03.06.2025. As the

intimation relating to the petitioner being released from custody was received on 04.03.2025, the review was well within 3 (Three) months.

[11] Thereby, it is submitted that the argument of the petitioner that the suspension was extended on 03.06.2025 after a lapse of 366 (Three Hundred and Sixty Six) days, beyond 270 (Two Hundred and Seventy) days of limitation cannot be accepted and thereby, the petition is liable to be dismissed.

[12] I have considered the submissions at the bar with circumspection.

[13] It would be apt to reiterate that - the suspension order was passed on 02.06.2024; the respondents were intimated of the bail order on 03.03.2025 which was received by them on 04.03.2025; the petitioner was released on bail on 18.01.2025;

the review committee was constituted on 28.05.2025;

After review meeting on 29.05.2025, the suspension order was extended w.e.f. 02.06.2025; and the order of extension was issued on 03.06.2025.

[14] Now, the question that falls for consideration is that whether the review was dehors the period as mandated by law.

[15] It is also apt to mention at this juncture that the petitioner was suspended immediately after he was arrested in connection with Itanagar WPS Case No. 20/2024 under Section 373 of Indian Penal Code, 1860 read with Sections 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 and read with Sections 3, 4, 5 and 6 of the Immoral Trafficking (Prevention) Act, 1956.

[16] As this is not a case of suspension on departmental proceeding initiated by the department, but suspension pursuant to a criminal offence allegedly committed by the petitioner, it is submitted that no memorandum of charge has been drawn against the petitioner. So, the contention that the petitioner is still under suspension without memorandum of charges being served, does not arise at all.

[17] The petitioner has relied on the decision of the Hon'ble Supreme Court in Ajay Choudhury (supra) wherein it has been held that:-

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the

grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

[18] Reverting back to this case, it is held that it is true that the suspension order of the petitioner is not pursuant to any departmental proceeding initiated by the Office, but pursuant to his arrest in criminal offence registered against him as per Rule 10 (2) of the CCS (CCA) Rules.

[19] Although this is not a case of continuous extension, yet the respondents' submission that as the petitioner is booked in a criminal offence, the Department may have delayed in formulating the memorandum of charge, holds no water.

[20] The petitioner is a Government servant and he was serving as an Assistant Commandant under 1st APP Bn, Chimpu, Itanagar when he was arrested in connection with the aforementioned criminal case. He is being under suspension continuously since 02.06.2004.

[21] The petitioner has also relied on the decision of this Court in Santosh Kumar (supra) wherein it has been held that:-

"10. The disputed issues in the present case are whether the suspension gets revoked unless the review of the suspension is made before expiry of the period of 90 days from the date of the order of suspension and also whether the suspension is required to be extended prior to expiry of 90 days."

"12. A careful perusal of the Rules reveal that the Rule 10 mandates categorically that an order of suspension made or deemed to have been made shall not be valid after a period of 90 days unless it is extended after review, for a period beyond the expiry of 90 days. The Rule therefore prescribes that any order of extension must be reviewed and also be extended before the expiry of 90 days of the order of suspension issued by the authority. This Rule came to be interpreted in a Judgment of the Apex Court rendered in Dipal Mali (Supra) where the Apex Court upheld the Judgment of High Court of Madhya Pradesh which had interfered with the extension of the suspension order and which order of the High Court came to be assailed before the Apex Court. The Apex Court upon examining the entire matter as well as the CCS (CCA) Rules categorically held that the review and modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of the order of suspension and as had been categorically provided under Sub Rule 7. The Apex Court held that the order of suspension made or deemed to be made would not be valid after a further period unless it was extended after review before expiry of the period of 90 days."

"14. From the pleadings available on record, it is clear that there is no dispute that the suspension order was issued on 19.7.2019 putting the petitioner under deemed suspension until further orders. There is also no dispute on facts that the petitioner was taken into custody on 19.09.2019 and therefore under the provisions of Rule 10(2) of the CCS (CCA) Rules, the petitioner was deemed to be under suspension by order dt. 27.09.2019 until further orders.

15. The question of review of such a suspension order or the necessity of continuance of such a suspension order is prescribed under Sub-Rule 7 of Rule

10. Proviso to Sub- Rule 7 of Rule 10 however, makes it clear that the review of such a suspension order shall be required only after the Government Servant detained in custody is released from detention or from the date on which the fact of his release was intimated to appointing authority.

16. In the facts of the present case, it is clear that after his release from detention on 18.04.2020, he had intimated to the respondent authorities by way of an E-mail on 20.04.2020 about his release from detention. There is no denial by the respondents regarding those emails by the petitioner. Therefore, in terms of Rule 10(7) of CCS (CCA) Rules, it is clear that the period of 90 days for review and extension of the order of suspension by the respondent authority was required to have been completed by 19.07.2020. But the same was issued only on 22.07.2020. Even if the argument of the counsel for the respondent is to be accepted that decision for review was taken on 25.06.2020 even then the order of extension of the review, as mandated under Rule 10(7) was required to be issued prior to the expiry of 90 days from the date of suspension of the petitioner and which date expired on 20.07.2020.

17. Under such circumstances, this Court is of the view that the impugned suspension order dated 22.07.2020 which was issued lost its force or validity w.e.f. 20.07.2020 and therefore an order which has lost its validity could not have been extended by subsequent order as have been done in the present case.

18. Accordingly, the writ petition stands allowed. The impugned order of suspension dated 22.07.2020 is hereby interfered with, set aside and quashed.

19. In view of the discussions and directions above, the subsequent orders of review passed by the departmental authority are also set aside and interfered with."

[22] Relying on this judgment, it is submitted on behalf of the petitioner that the respondent Department reviewed the suspension order dated 03.06.2025, after expiry of 366 (Three Hundred and Sixty Six) days during the extant currency of the petitioner's suspension.

[23] It is contended that the review was initiated when notices were issued to the respondents after this writ petition was filed on 01.09.2025.

[24] In view of the foregoing submissions and the documents annexed along with the petition, it has surfaced that the department was intimated about the petitioner's bail order on 03.03.2025 and the communication was received by the department on

04.03.2025. Annexure-1 to 4 of the counter affidavit of respondents No. 1 to 4, is the communication. Thus, the extension order was issued after expiry of 90 (Ninety) days on 03.06.2025, although it was to be effected from 02.06.2025.

[25] The argument of the learned Government Advocate that the extension of suspension of the petitioner was reviewed on 29.05.2025, well within the window of 90 (Ninety) days, cannot be accepted as the extension order was issued after expiry of 90 (Ninety) days i.e. on 03.06.2025. Although as per the order, the extension of suspension was to be effected from 02.06.2025, yet, the order was issued on 03.06.2025.

[26] On calculation of time, running from 04.03.2025, when the communication was received by the department reveals that after expiry of 91 (Ninety One) days, the suspension of the petitioner was extended for a period of 180 (One Hundred and Eighty) days.

[27] It is true that the petitioner is booked under a heinous offence. The petitioner is facing trial and the consequence of trial shall follow. However, despite the fact that the petitioner was placed under suspension pursuant to the allegations of a heinous offence, but in view of the fact that the suspension order was extended in violation to provisions of CCS (CCA) Rules, the impugned order dated 03.06.2025 has to be set aside.

[28] This Court relying on the decision of the Hon'ble Supreme Court in **Union of India & Ors. Vs. Dipak Mali**, 2010 2 SCC 222 has held in Santosh Kumar (supra) that the Apex Court upheld the judgment of the High Court of Madhya Pradesh which had interfered with the extension of the suspension order and which order of the High Court came to be assailed before the Apex Court. The Apex Court upon examining the entire matter as well as the CCS (CCA) Rules categorically held that the review and modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of the order of suspension.

[29] In the instant case as the order of suspension of the petitioner was deemed to have been made under Sub-Rule 2 of Rule 10 of CCS (CCA) Rules, the proviso to Sub-Rule 7 of Rule 10 comes into play and as per the proviso, the period of 90 (Ninety) days will start running and will be factored in, from the date of Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

[30] Thus, there is not even an iota of doubt that in violation of the provisions of the CCS (CCA) Rules, the extension order was passed after expiry of 91 (Ninety One) days.

[31] Learned counsel for the petitioner has also submitted that Circular No. F/No.AR-33/3/2025-SECT-1-AR/125 Dated Itanagar, the 23rd January, 2025 and has highlighted that:-

"1 ..

Provided that no such review of suspension shall be necessary in the case of deemed suspension, if the Government servant continues to be under detention and in such case the ninety days' period shall be computed from the date the Government

servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later:

Provided further that in a case where no charge sheet is issued under these rules, the total period under suspension or deemed suspension, as the case may be, including any extended period in terms of sub-rule (6) shall not exceed, -

(a) . 2. In view of (1) above, an order of suspension made or deemed to have been made shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of 90 days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time."

[32] In view of the foregoing discussions, this Court is constrained to set aside the order of extension of Shri Bulang Marik for a further period of 180 days w.e.f. 02.06.2025 as the order was issued on 03.06.2025 vide Order No. HOME11011/11/2024/765 Dated Itanagar, the 3rd June, 2024. Thereby, the Extension Order No. HOME-11011/11/2024/765 Dated Itanagar, the 3rd June, 2024 is set aside.

[33] In view of the above observation, this writ petition stands disposed of.

[34] No order as to costs

2026(1)PRC74

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge Sanjay Dhar)

Bail Application No 60 of 2025 **dated 21/11/2025**

Yasir Amin Khanday and Another

Versus

UT of J&k

BAIL UNDER POCSO ACT

Indian Penal Code, 1860 Sec. 376, Sec. 376C, Sec. 376B, Sec. 376A, Sec. 376D, Sec. 506, Sec. 376DA, Sec. 376AB, Sec. 376DB - Code of Criminal Procedure, 1973 Sec. 164, Sec. 167, Sec. 309 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 28, Sec. 29, Sec. 5, Sec. 30, Sec. 35 - Bail Under POCSO Act - Petitioners charged under IPC and POCSO Act for gang rape of minor girl - Contended delay in trial entitled them to bail and questioned court jurisdiction - Court held Principal Sessions Judges designated as Special Courts under POCSO and delay does not confer automatic right to bail - Provisions for speedy trial benefit victim not accused - Victim's and sister's testimonies supported prosecution case - No evidence rebutting

statutory presumptions under Sections 29 and 30 of POCSO Act - Gravity of offence and age difference emphasized - Bail denied - Bail Application Dismissed

Law Point: Delay in completion of trial under POCSO Act does not entitle accused to bail; statutory presumptions under Sections 29 and 30 operate unless rebutted by evidence

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 376C, Sec. 376B, Sec. 376A, Sec. 376D, Sec. 506, Sec. 376DA, Sec. 376AB, Sec. 376DB

Code of Criminal Procedure, 1973 Sec. 164, Sec. 167, Sec. 309

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 28, Sec. 29, Sec. 5, Sec. 30, Sec. 35

Counsel:

S T Hussain (Senior Advocate), Nida Nazir, Zahid Qais Noor, Ilyas Nazir Laway

JUDGEMENT

Sanjay Dhar, J.- [1] Through the medium of present petition, the petitioners are seeking bail in a case arising out of FIR No.18/2024 for offences under Section 376D, 506 of IPC and Section 5(g)/6 of POCSO Act registered with Police Station, Devsar Kulgam

[2] The facts leading to the filing of this petition are that on 05.03.2024, the father of the victim lodged a written report with the police alleging therein that on 03.03.2024 his minor daughter (victim) was called on phone by petitioner No.1/accused who told her that he has got her video in his phone and that if she does not come to him, he would make the said video viral. On account of this threat, the victim went out of her house to meet the said accused. On reaching there, the victim was caught hold of by petitioner No.1, her clothes were torn apart, whereafter he committed rape upon her. At the relevant time, petitioner No.2, the co-accused, was also present on spot who prepared a video with his mobile in respect of the occurrence. Thereafter the said accused threatened the victim that if she does not accede to his demand of sexual intercourse, he would make this video viral. Under this threat, petitioner No.2 also committed rape upon the victim. It was further alleged that at the relevant time sister of the victim, who is also a minor, was with her and she was threatened by both the accused not to narrate the occurrence to anyone.

[3] On the basis of the aforesaid report, the FIR was lodged and the investigation was set into motion. During investigation of the case, statements of the victim and her sister under Section 164 of the Cr. P. C were recorded. The accused were arrested and their mobile cellphones were seized and sent to FSL for examination. The victim was subjected to medical examination and statements of other witnesses were also recorded. After investigation of the case, offences under Section 376D, 506 IPC and 5(g)/6 of the POCSO Act were found proved against the petitioners and the challan was laid before

the learned Principal Sessions Judge, Kulgam (hereinafter referred to as "the trial court").

[4] It appears that on 21.05.2024, charges for offences under Section 376D, 506 of IPC and 5(g)/6 of POCSO Act were framed against the petitioners and the trial of the case commenced. The trial court record further shows that statements of as many as four witnesses have already been recorded.

[5] The petitioner, it seems, had approached the learned trial court for grant of bail but his bail application has been dismissed vide a detailed order dated 15.03.2025.

[6] The petitioner has sought bail on the grounds that as per proviso to Section 309 of the Cr. P. C, the trial in the instant case was required to be completed within a period of two months from the date of filing of the chargesheet and because the learned trial Court has failed to meet the aforesaid timeline, as such, the petitioners are entitled to bail. It has been further contended that the Court of Principal Sessions Judge, Kulgam, is not vested with the powers of a Special Court in terms of Section 28 of the POCSO Act, as such, the trial of the case before the said court is without jurisdiction. It has been further contended that the petitioners are young boys having good behaviour, therefore, there are no chances of their absconding during trial of the case. It has also been contended that the Public Prosecutor attached to the Court of learned Principal Sessions Judge, Kulgam, has not been appointed in terms of Section 32 of the POCSO Act.

[7] On merits, it has been contended that there are material contradictions in the statement of the victim and, as such, the petitioners are entitled to bail.

[8] The respondent has filed objections to the bail application, in which, besides narrating the allegations made in the charge sheet, it has been contended that the petitioners are involved in a heinous offence and, as such, they are not entitled to bail as a matter of right. It has been contended that the victim has supported the prosecution case during trial of the case and, as such, there is strong material in support of the charge laid against the petitioners. It has also been contended that if the petitioners are enlarged on bail, the victim, who is a minor girl, is likely to get frightened with their presence in the locality which would lead to her revictimization.

[9] I have heard learned counsel for the parties and perused record of the case.

[10] Before dealing with the ground regarding bail on merits of the case, it would be apt to deal with the legal issues that have been raised by the petitioners in support of their plea of bail.

[11] The first contention that has been urged is that the Court of learned Principal Sessions Judge, Kulgam, has not been designated as a Special Court in terms of Section 28 of the POCSO Act. In this regard, it is to be noted that in terms of notification issued by the Government on 25th June, 2018, the Principal Sessions Judges in every District of Jammu and Kashmir have been designated as Special Courts to try the offences under POCSO Act. Similarly, the Public Prosecutors appointed for aforesaid Courts have been appointed as Special Public Prosecutors in terms of Section 32 of the POCSO Act. Thus,

the contention of the learned Senior Counsel appearing for the petitioners in this regard is misconceived and deserves to be rejected.

[12] Another contention that has been raised by the learned Senior Counsel appearing for the petitioners is that in the present case the petitioners are facing trial for offence under Section 376D of IPC, as such, in terms of second proviso to Section 309 of the Cr. P. C, the trial had to be completed within a period of two months and once the learned trial court has failed to adhere to this timeline, the petitioners become entitled to grant of bail. To support his contention, the learned Senior Counsel has relied upon the judgments of the Supreme Court in the cases of Phoolchand vs. State of Rajasthan, 2023 Supp SAR(Cri) 947 and Atmakuri Yadagiri @Chanti vs. State of Telangana, 2023 Supp SAR(Cri) 615. It has also been contended that the provisions of Section 309 Cr. P. C are to be read in the light of the provisions contained in Section 167 of the Cr. P. C, which provide that once the chargesheet is not filed against an accused within the time stipulated in terms of Section 167 of the Cr. P. C, the accused is entitled to bail. Similarly, if the trial is not completed by a Criminal Court within the stipulated period of two months in a case involving offence under Section 376D of the IPC, the accused would be entitled to bail as a matter of right.

[13] I am afraid, the analogy and logic put forward by the learned Senior Counsel for claiming bail in default of the trial court in adhering to the deadline given in proviso to Section 309 of the Cr. P. C cannot be equated with a situation where the Investigating Agency fails to complete investigation within the timeline as provided under Section 167 of the Cr. P. C. This is so because sub-clause (ii) of clause (a) of proviso to sub-section (2) of Section 167 of the Cr. P. C, makes an express provision that in case the investigation is not completed within sixty days/ninety days, as the case may be, the accused person would mandatorily be released on bail if he is prepared to and does furnish bail. There is no such provision made in Section 309 of the Cr. P. C. Proviso to Section 309 only makes it mandatory for the trial court to complete the trial in cases relating to certain offences including offence under Section 376D within two months. The default in adhering to the said deadline would not necessarily lead to enlargement of accused on bail.

[14] The aforesaid issue has been deliberated upon by a Division Bench of Karnataka High Court in the case of Hanumantha Mogaveera vs. State of Karnataka, 2021 2 Crimes(Kar) 374 in the context of the provisions contained in Section 35 of the POCSO Act, which mandates completion of trial by a Special Court within a period of one month from the date of taking cognizance of offence. It would be apt to refer to the following observations made by the High Court of Karnataka:

41. Be that as it may. The second point of reference is, whether, the accused is entitled to be released on bail if the evidence of the child has not been recorded within a period of thirty days of taking cognizance of the offence or if the Special Court does not complete the trial within a period of one year from the date of taking cognizance. Such an interpretation would be an additional clause under the said provision and

giving an additional right to the accused. Even under Section 309 of Cr.P.C., the trial of the proceedings has to be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. The proviso thereto has been amended with effect from 03.02.2013 and the proviso thereto deals with trial relating to offence under Section 376 and related Sections of the Indian Penal Code, wherein the trial has to be completed within a period of two months from the date of filing of the charge-sheet, as far as possible. Thus, the expression 'as far as possible' is also found in proviso to sub-section (1) of Section 309 of Cr.P.C. Section 309 of Cr.P.C., also speaks about the circumstances under which no adjournment could be granted. The use of the expression "as far as possible" is also on account of the fact that under Section 37 of the POCSO Act, the trial has to be conducted in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence. But, if the Special Court is of the opinion that the child needs to be examined at the place other than the Court, it shall proceed to issue a commission in accordance with the provisions of Section 284 of Cr.P.C. In such a case, the circumstances under which commission for examination of witness is issued under Section 284 of Cr.P.C., would apply, namely that if the child cannot be procured without an amount of delay, expense or inconvenience, but in the circumstances of the case, would be unreasonable, then the Special Court may dispense with such attendance and may issue a commission for the examination of witness in a place other than the Court. The provisions dealing with Commission for the examination of witness *mutatis mutandis* apply when the Special Court orders examination of the child at a place other than the Court. Therefore, in such circumstances, there may be delay in recording the evidence of the child within a period of thirty days of taking cognizance of the offence by the Special Court or even delay in completion of trial within a period of one year from the date of taking cognizance of the offence. In such an event, it cannot be treated to be a default, which would enure to the benefit of the accused so as to give the accused a right to be released on bail.

42. It is observed that the object and purpose of Section 35 of the POCSO Act is for the benefit of the child victim and is not to be considered as an additional clause for the purpose of granting bail to the alleged perpetrator or the accused.

43. As discussed above, there may be various reasons and circumstances beyond the control of the Special Court under which the conclusion of the proceedings within a period of one year may not happen. As already noted, the reasons for the same have been discussed above. Under such circumstances, the accused cannot enforce the right to be released on bail. No such right is envisaged under the said provisions of the Act and the same cannot be read into it by way of an interpretation which may go against the interest of the child victim. If the aforesaid interpretation is to be made then, there would be every attempt made to delay the proceedings before the Special Court

beyond the period of one year and seek release of accused on bail. Such a position cannot be encouraged nor is it envisaged under the POCSO Act.

[15] From the foregoing analysis of the legal position, it is clear that the mandate regarding completion of trial within a particular period as given in the POCSO Act or under proviso to Section 309 of the Cr. P. C, is for the benefit of the victim and if the timelines set by the statute for completion of trial are not met by the Special Court or the criminal court, the accused would not become entitled to bail automatically.

[16] The proviso to Section 309 of the Cr. P. C makes reference to certain offences like Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA or Section 376DB of IPC. The intention of the legislature in providing for swifter trial of such offences is to ensure speedy justice to the victims of these crimes. This mandate given by the legislature cannot enure to the benefit of the accused. The logic adopted by the Karnataka High Court in interpreting the provisions of Section 35 of the POCSO Act is applicable on all fours to the cases involving sexual offences, regarding which timelines have been laid down for trial in terms of proviso to Section 309 of the Cr. P. C. The contention of the learned Senior Counsel appearing for the petitioners that merely because the learned trial has not completed the trial of the case within two months of filing of the chargesheet, the petitioners are entitled to bail, is wholly misconceived.

[17] That takes us to the merits of the case. The settled legal position about the matters to be considered for deciding an application for bail is that the Court has to consider the following factors:

- (i) Whether there is any prima facie or reasonable ground to believe that the accused has committed offence;
- (ii) Nature and gravity of the charge;
- (iii) Severity of punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing after release on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with and
- (viii) danger of justice being thwarted by grant of bail.

[18] When it comes to offences punishable under a special enactment, like POCSO Act, something more is required to be kept in mind in view of the special provisions contained in the said enactment. Section 31 of the said Act makes the provisions of the Code of Criminal Procedure applicable to the proceedings before a Special Court and it provides that the provisions of the aforesaid Code including the provisions as to bail and bonds shall apply to the proceedings before a Special Court. It further provides that the Special Court shall be deemed to be a Court of Sessions. Thus, it is clear that the provisions of Cr.P.C including the provisions as to grant of bail are applicable to the proceedings in respect of offences under the POSCO Act.

[19] Section 29 of the POCSO Act raises a presumption of commission of an offence under Sections 3,5,7 and 9 of the said Act against a person who is prosecuted for commission of the said offence, unless contrary is proved. Similarly, Section 30 of the POCSO act raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has been given a right to prove the fact that he had no such mental state. Thus, once chargesheet has been laid against an accused for commission of an offence, inter-alia, under Section 5 of the POCSO Act, the presumption under Section 29 and 30 shall come into play. In the present case, not only the chargesheet has been produced against the petitioners but even the charges have been framed against them, inter-alia, for offence under Section 5(g) of the POCSO Act. Therefore, it has to be presumed that the petitioners have committed the said offence unless it is shown by them on the basis of the evidence led before the trial court that such presumption gets rebutted.

[20] The Supreme Court has, in the case of **State of Bihar vs. Rajballav**, 2017 2 SCC 178, held that the presumption of innocence of an accused is not applicable to the cases where there is a contrary statutory presumption of his guilt, such as when prosecuted under Sections 3,5,7 & 9 of the POCSO Act.

[21] With the aforesaid legal position in mind, let us now proceed to consider the present case on its merits.

[22] If we have a look at the statement of the victim recorded during trial of the case, she has clearly stated that on the fateful day she was called by petitioner No.1 on her phone and was told that he has her video in his phone. Petitioner No. 1 threatened her that if she does not come to him, he will make the video viral, so she, along with her sister, proceeded to meet petitioner No.1. She further stated that when she met petitioner No.1, he was getting many calls on his phone and she suspected that he does not have any of her videos and when tried to slip away from the spot, petitioner No.1 caught hold of her arm, gagged her mouth and laid her down, whereafter he committed rape upon her. She further stated that in the meantime, petitioner No.2 came on spot and he recorded the act on his phone. She told petitioner No.2 to delete the video but he slapped her and told her that if she meets her demand of sexual intercourse, he will delete the video, whereafter petitioner No.2 also committed rape upon her. Her sister was threatened not to disclose the occurrence to anyone. The victim was also threatened that in case she discloses the occurrence to anyone, her video will be made viral. On the next day, she had to take examination and on coming back, she narrated the occurrence to her elder sister. The victim has been cross-examined at length by the defence counsel.

[23] Although at the time of considering a bail application, a meticulous analysis of the evidence has to be avoided, yet, for the limited purpose of considering whether there is a prima facie case against the petitioners/accused, when we have a cursory look at the statement of the victim, it does appear that she has prima facie supported the prosecution case. Her sister, who is the eye witness, has also prima facie supported the prosecution

case while making her statement during trial of the case. The petitioners have, therefore, not succeeded in bringing to the fore any material that would rebut the presumption that has triggered against them in view of the provisions contained in Section 29 and 30 of the POCSO Act.

[24] The petitioners are alleged to have committed gang rape upon a minor girl, who, at the relevant time, was barely 13 years of age. The petitioners are grownup persons. While petitioner No.1 is aged 28 years, petitioner No.2 is aged 32 years. So, it is not a case of teen age love but it is a case where grownup men have molested a girl aged about 13 years. This makes the alleged act of the petitioners more heinous in nature and it shows an element of perversion in the offence alleged, which carries maximum of life imprisonment for remainder of natural life with minimum punishment of 20 years. Even sentence of death is provided as punishment under Section 6 of the POCSO Act. Therefore, at this stage, the petitioners cannot claim bail in their favour.

[25] The contention of learned Senior Counsel for the petitioners that there has been delay in conclusion of the trial in the present case, is also belied from the minutes of proceedings of the trial court. It appears that the trial of the case is progressing at good pace and out of twelve listed witnesses, five witnesses had already been examined at the time of summoning of the trial court record in the month of May, 2025. Therefore, it is not a case where the petitioners have remained incarcerated for a long period of time on account of delay in progress of trial. On this ground also, the petitioners cannot claim bail in their favour.

[26] For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly

2026(1)PRC81

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge Sanjay Vashisth)

CrM M (Criminal Main) No 30815 of 2025, 39378 of 2025 **dated 20/11/2025**

Arun Baniwal @ Arun @ Jagira; Ankit Giri

Versus

State of Haryana

BAIL IN KIDNAPPING CASE

Indian Penal Code, 1860 Sec. 376, Sec. 354A, Sec. 511, Sec. 364A, Sec. 120B, Sec. 506, Sec. 386 - Code of Criminal Procedure, 1973 Sec. 439 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483 - Bail in Kidnapping Case - Petitioners sought regular bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita corresponding to Section 439 CrPC - Allegations involved kidnapping, confinement and ransom of large sum - Petitioners contended false implication due to family disputes and absence of

direct role - Prosecution asserted serious nature of offences involving armed kidnapping and extortion - Both petitioners in custody for long period with limited progress in trial - Court considered gravity of charges, role of petitioners and material evidence - Held that offences involved organized kidnapping and extortion with use of weapons and ransom demand - Custodial period alone not ground for release where allegations grave and supported by material - Bail declined - Petitions Dismissed

Law Point: In offences involving kidnapping for ransom under Section 364A IPC and allied sections, seriousness of allegations, organized nature of crime and use of weapons outweigh consideration of long custody unless evidence is weak or trial unreasonably delayed.

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 354A, Sec. 511, Sec. 364A, Sec. 120B, Sec. 506, Sec. 386

Code of Criminal Procedure, 1973 Sec. 439

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483

Counsel:

Ramnish Puri, Ajay Sharma, P K Jhanda, Saransh Sabharwal

JUDGEMENT

Sanjay Vashisth, J.- [1] This order shall dispose of CRM-M-30815-2025 & CRM-M39378-2025, as both the petitions are interconnected and have arisen out of same FIR. However, the lead case is CRM-M-30815-2025.

[2] The instant petitions have been filed under Section 483 of BNSS, 2023 (earlier Section 439 Cr.P.C.), for grant of regular bail to the petitioners, during the pendency of trial, who have been booked in a criminal case arising out of First Information Report, as detailed here-under:-

Name of Petitioner(s)	FIR No.	Date	Section(s)	Police Station	District
Arun Baniwal @ Arun @ Jagira (petitioner in CRM-M-30815-2025)	150	06.04.2024	365, 34 of IPC [364A, 452, 386, 148, 149, 120-B of IPC], and 25 of Arms Act	Pinjore	Panchkula

Ankit Giri (petitioner in CRM-M- 39378-2025)					
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[3] Incident took place on 06.04.2024, at about 9:30 PM, when the complainant - Rishi Pal was taking meal at his home. As per the allegations, 7/8 boys entered the house and by showing pistol-like weapons, sticks and rods, kidnapped him from there and forcibly put him inside a Mahindra XUV-500 car bearing registration No. HR26-CD-1731 of silver colour. At the time of occurrence, Manjit Kaur and Ashok Kumar were also sitting there. It is further alleged that the accused had reached the house of the complainant in three vehicles - the aforesaid XUV-500, a Swift (black colour) and a Verna (white colour). After kidnapping the complainant, they proceeded towards Panchkula-Zirakpur Highway. Thereafter, the complainant was taken to some deserted place, where the accused persons started demanding money from him. It is also mentioned in the FIR that while the complainant was being kidnapped, the accused persons were calling each other by their names and therefore the complainant came to know of two names, namely, Anmol and Ankit. Subsequently, Manjit Kaur was called upon by the accused persons and ransom amount of 25,00,000/- ? was demanded from her, if she wanted to see the complainant alive. Later on, after about 21/2 hours, the complainant was dropped near Sector-21, Tau Devi Lal Stadium, Panchkula, after receipt of the ransom amount.

[4] Learned counsel for the petitioner - Ankit Giri (in CRM-M39378-2025) submits that petitioner - Ankit Giri and his family members were already known to Manjit Kaur, who is one of the material witnesses in the present case and to whom the alleged ransom call was made while the complainant was kidnapped and being taken towards the Panchkula side. While referring to FIR No.159 dated 28.12.2021, registered under Sections 376, 511, 354-A, 506, 120-B IPC at Police Station Women, Panchkula, it is argued that the said FIR was registered at the instance of Manjit Kaur against Sanjiv Kumar (maternal uncle of the petitioner), Sunita Giri (mother of the petitioner) and Kulwant Kaur (maternal grandmother of the petitioner). However, referring to the cancellation report dated 25.08.2022, learned counsel submits that the said FIR was found to be false. Thus, it is argued that only to take revenge from the petitioner's family, this time the present false case has been lodged and petitioner - Ankit Giri has been named in the FIR by concocting the version of kidnapping. Learned counsel further submits that even the FIR contains the wrong name of the father of the petitioner, which itself shows that the complainant was not unfamiliar with the petitioner and that both sides were already acquainted with each other owing to certain money transactions.

[5] While making submissions on behalf of the petitioner - Arun Baniwal @ Arun @ Jagira, learned counsel argues that petitioner is not named in the FIR and his implication is solely on the basis of one alleged phone call made by the petitioner to co-

accused - Gagandeep Mann, who was not even named in the FIR and whose name surfaced only through disclosure statements of some other accused. It is also argued that although earlier three cases had been registered against petitioner - Arun Baniwal @ Arun @ Jagira, but he has been acquitted in all those cases. Thus, as of now, no criminal case is pending against him.

[6] Learned counsel for the petitioner - Ankit Giri further submits that although earlier two cases were registered against him under the Juvenile Justice Act, but in both cases he was convicted and sentenced to the period already undergone. Thus, no other criminal case is pending against him as on date. During the hearing, it is also informed that both the petitioners are inside jail since 12.06.2024 and 11.04.2024, respectively, and that out of a total of 28 prosecution witnesses, only 02 material witnesses including the complainant have been examined so far, and 02 witnesses have been given up by the prosecution.

[7] On the other hand, learned State counsel files the custody certificates dated 19.11.2025, in Court today, which are taken on record, subject to all just exceptions. Office to tag the same at appropriate place. Copies thereof have been handed over to learned counsel for the petitioners.

[8] Learned State counsel, while opposing the prayer for bail, submits that the allegations against both the petitioners are grave in nature, involving offences under Sections 364-A & 386 of IPC (added later), which carry severe punishment. He further submits that the complainant was forcibly kidnapped at gunpoint, taken away in multiple vehicles, assaulted, and ransom of 25,00,000/- was extorted before he was released. The nature ? of the act shows pre-planning and organized execution, involving a group of armed persons.

Learned State counsel further submits that trial is underway, and given the seriousness of the allegations, no ground is made out for grant of regular bail. However, learned State counsel fairly conceded the other factual submissions, so addressed by the petitioners' counsel here-above.

[9] I have heard learned counsel for the parties and have perused the record with their able assistance.

[10] From the record, it is not in dispute that both the petitioners are in custody since 12.06.2024 and 11.04.2024 respectively, i.e., for more than 01 year and 07 months. Out of 28 prosecution witnesses, only two material witnesses including the complainant have been examined so far, and the pace of trial is admittedly slow. Two witnesses have already been given up.

[11] As regards petitioner - Ankit Giri, although he is named in the FIR, the allegation of long-standing family dispute with witness Manjit Kaur cannot be ignored entirely. Whether this dispute has any bearing on the version of the FIR is an issue to be adjudicated during trial.

[12] Insofar as petitioner - Arun Baniwal @ Arun @ Jagira, is concerned, his implication rests primarily on one phone call allegedly made to co-accused Gagandeep Mann, who was not even named in the FIR and surfaced only during the disclosure statements. No recovery has been effected from petitioner Arun Baniwal, and he is not named in the FIR. His previous cases have ended in acquittal, and no other case is pending against him.

[13] This Court is conscious of the gravity of the allegations under Sections 364-A and 386 of IPC. However, prolonged pre-trial incarceration, especially when the trial is likely to take considerable time, cannot be overlooked. Both petitioners have already undergone substantial custody; there is no allegation that either of them has attempted to tamper with evidence or threaten any witness after arrest; and the key prosecution witnesses, including the complainant, have already been examined.

Thus, considering the totality of circumstances, custodial period, the progress of trial, absence of recovery from the petitioners, and the fact that their further detention will not serve any useful purpose, this Court is satisfied that a case for grant of regular bail is made out.

Consequently, prayer made in the present petitions are **allowed**. Petitioners - **Arun Baniwal @ Arun @ Jagira and Ankit Giri** are ordered to be released on bail, subject to their furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

[14] Needless to observe that the petitioners shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

[15] The observation made here-in-above shall not be construed as an expression of opinion on the facts of the case and the Trial Court is expected to decide the case on the basis of complete evidence available on record.

[16] Petitions stand disposed of.

Pending misc. application(s), if any, also stand disposed of. Photocopy of this order be placed on the file of other connected case

2026(1)PRC85

MADHYA PRADESH HIGH COURT

(Hon'ble Judge Sanjeev Sachdeva; Vinay Saraf; Sandeep Natvarlal Bhatt)

W P (Writ Petition) No 15906 of 2025 **dated 19/11/2025**

Ram Nivas

Versus

State of M P and Others

ILLEGAL DETENTION

Constitution of India Art. 22, Art. 21 - Indian Penal Code, 1860 Sec. 506, Sec. 376 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 5 - Illegal Detention - Petitioner filed Habeas Corpus petition alleging unlawful detention of his brother for offences under IPC and POCSO Act - Allegation made that arresting officer did not follow procedure and that multiple bail applications had been rejected resulting in prolonged incarceration - It was urged that such continued custody violated fundamental rights guaranteed under Articles 21 and 22 of Constitution - State submitted that detention followed due process and hence Habeas Corpus not maintainable - Division Bench examined earlier coordinate Bench decision where release was ordered despite judicial custody and disagreed with that view - It held that detention pursuant to judicial order after due process cannot be termed illegal for purpose of Habeas Corpus - Petition seeking writ of Habeas Corpus therefore found not maintainable - Petition Dismissed

Law Point: Habeas Corpus petition cannot be entertained when detention is by virtue of judicial order passed after due process of law even if successive bail applications are rejected; remedy lies in appeal or revision before competent forum and not through Habeas Corpus proceedings

Acts Referred:

Constitution of India Art. 22, Art. 21

Indian Penal Code, 1860 Sec. 506, Sec. 376

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 5

Counsel:

Krishna Kumar Pandey, Siddharth S Pandey, Vivek Sharma, Aditya Adhikari (Senior Counsel), Anannya Shree Adhikari

JUDGEMENT

[1] This Habeas Corpus petition is preferred by the petitioner complaining illegal and unlawful detention of his brother Akash s/o Chatarbhuji in connection with Crime No. 44/2024 of police station Mahila Thana, Sehore under Sections 376(3) and 506 of I.P.C. and 5/6 of POCSO Act on account of dismissal of bail application B.A. no. 236/2024 on 27.06.2024 by IIIrd Sessions Judge, Sehore.

[2] It is contended that the detention of his brother is arbitrary, violative of his brother's fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India, and amounts to custodial abuse of power.

[3] As per the petitioner, before arresting petitioner's brother, arresting officer did not follow the procedure and did not inform the petitioner's brother regarding his rights and thereafter he was remanded to judicial custody and his bail application was originally dismissed by Sessions Court, and thereafter, by High Court thrice as withdrawn by order dated 22.11.2024 passed in M.Cr.C. no. 40688/2024, 10.02.2025 in

M.Cr.C. no. 662/2025 and 08.04.2025 in M.Cr.C. no. 8179/2025 and the freedom of his brother guaranteed by Constitution of India has been infringed as he possesses an inalienable right to oversee his legal defence and present his case effectively and by repeated denial of bail applications, resulting in his prolonged incarceration, fundamentally undermines this crucial legal entitlement.

[4] Reliance was placed on the judgment dated 03.10.2024 of a Division Bench of this Court in **W.P. No. 24337 of 2024 (Kusum Sahu vs. State of MP and ors.)** whereby the coordinate Bench exercising powers under Article 226 of the Constitution of India had ordered release of the detinue on bail, holding as under:

"This petition under Article 226 of the Constitution of India seeking Writ of Habeas Corpus has been filed by the petitioner aggrieved by the Order dated 23.01.2024 passed in M.Cr.C.No.58100/2023; Order dated 05.04.2024 passed in M.Cr.C.No.9299/2024; Order dated 14.03.2024 passed in M.Cr.C. No. 10613/2024 and Order dated 29.05.2024 passed in M.Cr.C.No.19661/2024.

2. The petitioner is daughter of Jibrakhan Lal Sahu, who is accused in Crime No.157/2021, registered at Police Station Bagsewania, for the offences punishable under Sections 420 and 409 of I.P.C. The said FIR is unnamed and has been registered against petitioner's father on false allegations, as stated in the present petition, of having committed Cheating and Criminal Breach of Trust and thus, misappropriation of Rs.1,98,000/- of various investors while acting as Director of the Company, namely, Suvidha Land Developers India Pvt. Ltd.

3. The case of the petitioner herein is that the father of the petitioner is neither a Director in the aforesaid Company nor Managing Director nor has collected any money from any of the complainants.

4. Shri Amitabh Gupta, learned counsel appearing on behalf of the petitioner submits that the father of the Petitioner is in custody since the date of his arrest i.e. 12.12.2023. The successive bail applications have been filed and rejected by recording incorrect facts which are absolutely de-hors the record filed by the police in the form of charge sheet as well as the records of the erring company filed in support of the bail applications. It is averred that the father of petitioner had filed four bail applications seeking his release from illegal detention under Section 439 of Cr.P.C. which have been dismissed. The Order rejecting the bail applications of father of the petitioners are no less than illegal Orders of continuing detention. Hence, the present petition deserves to be allowed.

11. Thereafter, pursuant to filing of the charge sheet, second application for grant of regular bail was filed before the learned single Judge of this Court vide M.Cr.C.No.9299/2024 by disputing the submission of learned Public

Prosecutor that the petitioner was working as Managing Director of the Company and by quoting the scheme of doubling of the money deposited within a period of five years, cheated Rupees Two Crore Fifteen Lacs and Sixty Five Thousand from the innocent investors. However, the petitioner and her mother, being confounded by the contents of the Order, filed third application for bail vide M.Cr.C.No.10613/2024. But, this application also met the same fate as earlier, with the same observation recorded by the learned Single Judge. The fourth application also met the same fate.

12. Thus, the father of the petitioner had two options, one to file the present petition and the second to challenge the rejection of the bail Orders before the Hon'ble Supreme Court.

13. It is not in dispute that the respondent/State failed to satisfy this Court on what grounds they made statement before the learned Single Judge that father of the Petitioner was Director/Managing Director.

14. Learned counsel for the respondent/State has drawn the attention of this Court to page 124 of the petition, wherein Para-34 of the Order passed by Securities and Exchange Board of India (SEBI) mentions the names of four Directors, namely, Shri Rajendra Karn Rajpoot, Shri Vinod Kumar Shankwar, Shri Pardeshi Ram and Shri Jagdish Biswas. But the fact remains that the father of the petitioner is neither Director nor the Managing Director.

18. No doubt, against a bail Order, the higher Court can be approached. In the present case also, the petitioner could have approached the Supreme Court but a person who is having equity share of Rs. 6,250/- only and belongs to a lower strata of the society, has no courage/finances to approach the Supreme Court by engaging a private counsel; and is facing mental agony of rejection of multiple bail applications on the false averments/allegations, as apparent on the fact of the record by the concerned Police Station. Therefore, we find that since the father of the petitioner is in illegal detention, it is a fit case to exercise power under Article 226 of the Constitution of India to entertain this petition and pass orders.

19. Accordingly, in the peculiar facts of the present case, we hereby allow the present petition directing the concerned jail authorities to release the father of the petitioner forthwith subject to his furnishing a personal bond of Rs.5,000/- with one surety of the like amount to the satisfaction of the trial Court."

[5] The stand of the State was that since the corpus had been incarcerated by following due process of law, therefore, a petition seeking a writ of Habeas Corpus would not be maintainable. Submission was made on 07.05.2025 that the Division Bench of this Court in **Kusum Sahu (supra)** had not correctly appreciated the scope and extent of powers of a Writ Court under Article 226 of the Constitution of India while

entertaining a petition seeking a Writ of Habeas Corpus particularly, in a case where the detinue had been remanded to judicial custody and repeated bail applications had been considered and dismissed by the trial court as also the High Court.

[6] Division Bench of this Court on 19.05.2025 noticing the law laid down by the Supreme Court in **Col. Dr. B. Ramachandra Rao vs. State of Orissa and others**, 1972 3 SCC 256, **Talib Hussain vs. State Of Jammu And Kashmir**, 1971 3 SCC 118, **Kanu Sanyal vs Distt. Magistrate, Darjeeling & Ors**, 1974 4 SCC 141 and **Central Bureau of Investigation vs Motilal and ors**, 2010 15 SCC 782 respectfully with the view taken by the other Division Bench of this Court in **Kusum Sahu (Supra)** that if successive bail applications were dismissed and/or the detinue did not have the means to engage a private counsel for approaching the higher court the detention could be treated as illegal and Habeas Corpus petition could be entertained. The Division Bench while disagreeing with the judgment in **Kusum Sahu (Supra)** framed the following questions:

"(a) Whether the judgment of the coordinate bench dated 03.10.2024 in **Kusum Sahu vs. State of M.P. (W.P. No.24337 of 2024)** is per incuriam having been passed in ignorance of the judgments of the Supreme Court ?

(b) Whether a writ of habeas corpus can be issued merely because repeated bail applications are dismissed and/or the detinue does not have the means to approach the higher court ?"

[7] Learned Amicus Curiae submits that a Special Leave Petition was also filed by the State before the Supreme Court challenging the decision in **Kusum Sahu (supra)** being **Criminal Appeal No.4710 of 2025 (State of Madhya Pradesh vs. Kusum Sahu)**. Supreme Court in the said Criminal Appeal by judgment dated 03.11.2025 has set aside the judgment in **Kusum Sahu** holding as under:-

"15. A perusal of the impugned order passed by the High Court shows that the factum of rejection of four bail applications filed on behalf of accused/Jibrakhan Lal Sahu, father of the respondent, has been noticed. The argument raised by the learned counsel for the respondent/Kusum Sahu before the High Court was that the orders rejecting bail application of her father are no less than illegal orders of continuing detention. Though the rejection of bail by the High Court can be challenged before this Court, yet a habeas corpus petition was filed. Despite objection of the maintainability of the petition raised by the State, the High Court allowed the same. It is specifically noticed by the High Court that the orders passed by the High Court rejecting bail of the accused can be challenged before the higher court only. The facts of the case on merits were noticed and examined by the High Court and after going through the same and recording that the parties before the Court had no finances to approach the Supreme court and are facing mental agony, the High Court found that it was a fit case for exercise of

jurisdiction under Article 226 of the Constitution of India. Finally, the Authorities were directed to release Jibrakhan Lal Sahu.

16. The facts of the case, as noticed above, in brief, indicate that the manner in which the case has been dealt with really shocks the conscience of this Court. It is a case where accused was arrested and filed four bail applications before the High Court, which were rejected. Despite this, in a habeas corpus petition filed by his daughter, his custody has been held to be unlawful and he was directed to be released while examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application. The process followed is totally unknown to law. Lest the High Court starts following the impugned order as a precedent to scuttle the due process of law, to nip the evil in the bud, we hold that custody of an accused in a criminal case registered against him cannot be held to be unlawful especially when his bail applications have been dismissed. In the case at hand, it is not disputed that Jibrakhan Lal Sahu, father of the respondent herein, is an accused in a criminal case registered against him in which chargesheet has also been filed."

[8] Supreme Court in the said Criminal Appeal specifically held that the custody of an accused in a criminal case registered against him cannot be held to be unlawful, especially when his bail applications have been dismissed. Supreme Court has specifically held that the judgment of the Division Bench of this Court in **Kusum Sahu** cannot be treated as a precedent.

[9] In view of the above and also the factum of setting aside of the judgement in **Kusum Sahu** and the observation of the Supreme Court that said judgment cannot be treated as a precedent, the questions referred are answered in terms of the judgment of the Supreme Court.

[10] Copy of the judgment of the Supreme Court as well as this order be circulated to all the Judges of the High Court at its Benches.

[11] List the Writ Petition before the Division Bench on 20.11.2025

2026(1)PRC90

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge G Girish)

CrI M C (Criminal Miscellaneous Case) No 5348 of 2019 **dated 17/11/2025**

Pradeep S/o Wilson

Versus

Station House Officer; Xxxxxxxx (Victim)

CONSENSUAL RELATIONSHIP

Indian Penal Code, 1860 Sec. 90, Sec. 376, Sec. 496, Sec. 493 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 198 - Consensual Relationship - Accused sought quashing of rape and deception charges arising from long-term relationship with widow who alleged promise of marriage - Relationship continued for years even before death of complainant's husband and after accused's subsequent marriage - It was found that sexual relations were consensual and not induced by false promise - Complaint under Sections 493 and 496 unsustainable without private complaint as per Section 198 CrPC - Promise of marriage cannot constitute misconception of fact under Section 90 unless made deceitfully without intent to marry - Facts showed mutual affection not deception - Continuation of relations after knowing accused's marriage confirmed consent - Criminal proceedings quashed - Allegations failed to make out offences under Sections 376, 493, 496 IPC - Petition Allowed

Law Point: Long-standing consensual relationship based on mutual affection does not amount to rape or deceitful marriage; false promise attracts liability only when made without genuine intent to marry and solely to obtain sexual consent

Acts Referred:

Indian Penal Code, 1860 Sec. 90, Sec. 376, Sec. 496, Sec. 493
Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 198

Counsel:

B Mohanlal, Ajith Krishnan, Seena C

JUDGEMENT

G Girish, J.- [1] The accused in S.C No.802/2019 on the files of the Additional Sessions Court-IX, Thiruvananthapuram has filed this petition under Section 482 Cr.P.C to quash the proceedings against him in the said case. The allegation against the petitioner is that he committed the offences punishable under Sections 493, 496 and 376 I.P.C.

[2] The prosecution case is summarised as follows:

The de facto complainant/second respondent is a widow having a daughter and a son aged 18 years and 16 years respectively. Her husband died in the year 2013. During 2009, the petitioner befriended the de facto complainant by calling her over mobile phone and rendered financial assistance to her. While so, on a day in the year 2009, the petitioner came to the room which the de facto complainant was occupying at Kuzhithura in connection with her business of sale of 'agarbathi' and 'olibanum', and indulged in sexual relationship with her after making her believe that he would marry her. Thereafter, on 22.10.2013, the husband of the de facto complainant passed away. After the death of the husband of the de facto complainant, the petitioner resided along with the de facto complainant and her children and maintained the relationship with her. While so, the petitioner got employment as a Watcher in the Forest Department at

Wayanad. Even thereafter, the petitioner used to come to the residence of the de facto complainant on leave and indulged in sexual relationship with her. When the de facto complainant insisted for the performance of a marriage, the petitioner tied a knot in the gold chain worn by her in front of a candle and lamp and made her believe that he had married her. The relationship between the petitioner and the de facto complainant went on for years. While so, the de facto complainant came to know that the petitioner had married another woman residing at Aryanad. When the de facto complainant questioned the petitioner about the aforesaid alliance, he replied that though he had married another lady, he considered the de facto complainant alone as his wife and continued physical relationship with her. On 01.11.2017, the de facto complainant had the occasion to talk with the lady whom the petitioner had married, over telephone. At that time, the de facto complainant had told that lady that even before the petitioner married her, he had tied the nuptial knot upon her neck and that both of them were living as husband and wife for a long period. However, the petitioner called the de facto complainant on 04.11.2017 and informed her that he does not want to continue the relationship with her and that she should not call him thereafter. Though the de facto complainant tried to contact the petitioner on several occasions thereafter, he did not care to respond. Though the de facto complainant came to the office of the petitioner at the place called Kattikulam, the petitioner did not care to accept her, and instead, shouted at her to leave from that place. Thus, the petitioner committed the aforesaid offences.

[3] In the present petition, the petitioner would contend that none of the offences alleged in this case are legally sustainable. According to the petitioner, the consensual relationship between him and the de facto complainant will not constitute the offence of rape. He denied the accusation that he had offered to marry the de facto complainant.

[4] Heard the learned counsel for the petitioner, the learned counsel for the second respondent / de facto complainant, and the learned Public Prosecutor representing the State of Kerala.

[5] As regards the offences under Sections 493 and 496 I.P.C incorporated in the final report, it has to be stated that a prosecution for the commission of the aforesaid offences is, prima facie, not maintainable since under Section 198 Cr.P.C, the court concerned is proscribed from taking cognizance of the said offences except upon a complaint made by a person aggrieved by the offence. Therefore, the petitioner cannot be compelled to face trial for the offences under Sections 493 and 496 I.P.C in a final report filed by the police under Section 173(2) Cr.P.C.

[6] As regards the offence under Section 376 I.P.C, it is pertinent to note that the facts revealed from the prosecution records itself make it clear that the sexual relationship between the petitioner and the de facto complainant was purely consensual. It is true that the de facto complainant had come forward with a contention that she extended consent for the above relationship believing the offer of marriage by the petitioner. However, it is not possible to attribute any credence to the aforesaid

contention of the de facto complainant since it is seen that even as per her version she had been maintaining relationship with the petitioner from the year 2009 which was about four years prior to the death of her husband. It is not possible to accept the contention of the de facto complainant that she had extended consent for sexual relationship with the petitioner at a time when her husband was alive, believing the offer made by the petitioner to marry her. The subsequent conduct of the de facto complainant maintaining the relationship with the petitioner for about four years after the death of her husband, also show that the sexual relationship between the petitioner and the de facto complainant cannot be classified as rape. True that the de facto complainant has got a case that the petitioner contracted marriage with another lady during the year 2014 against the promise made to her that she alone would be considered as his wife. But the above allegation of de facto complainant is of no consequence since the statement of the de facto complainant itself would reveal that she maintained relationship with the petitioner even after knowing the aforesaid marriage of the petitioner with another lady. An overall analysis of the relationship between the petitioner and the de facto complainant for a period of more than eight years starting from 2009, when the husband of the de facto complainant was still alive, would make it clear that the consensual sex between the de facto complainant and the petitioner cannot be termed as rape.

[7] The consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. A promise to marry without anything more will not give rise to misconception of fact within the meaning of Section 90 IPC. However, the position will be different if it is shown that the accused, with a view to elicit the assent of the victim, gave the false promise of marriage, without having the intention or inclination to marry her, and made the victim submit herself to him, and later on deceived her by backtracking from the promise of marriage.

[8] In **Uday v. State of Karnataka**, 2003 4 SCC 46 the Apex Court, while dealing with this issue, held as follows:

"It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts

which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

[9] In **Deepak Gulati v. State of Haryana**, 2013 7 SCC 675 the Hon'ble Supreme Court, on the aspect of consent in rape cases, held as follows:

"Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives."

[10] Again in **Dhruvaram Murlidhar Sonar v. State of Maharashtra**, 2019 18 SCC 191, the Hon'ble Supreme Court, while interpreting Section 90 IPC and clause 'secondly' in Section 375 IPC observed as follows:

"Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by the accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his

control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

[11] Very recently, while dealing with a case where a married woman having three children alleged rape under false promise of marriage upon a person, the Apex Court held in **Naim Ahamed v. State (NCT of Delhi)**, 2023 15 SCC 385 as follows:

"22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC."

[12] Thus, the consistent view being followed in the aforesaid judicial precedents is that absence of consent cannot be presumed in every case where the prosecutrix alleges that she indulged in sexual intercourse with the offender believing the offer of marriage made by him. For bringing home the offence of rape, it has to be established that from the very beginning the accused was not having any intention at all to marry the prosecutrix and that the offer of marriage was made as a ploy to make her surrender to him in order to satiate his carnal desires.

[13] As far as the present case is concerned, the aforesaid vital requirement to establish misconception of facts vitiating the consent extended by the de facto complainant is lacking, and hence it cannot be said that the offence of rape is attracted. The long cohabitation of the accused and victim over a period of more than eight years itself show that their relationship partook the character of consensual sex, and that the accused and victim had been behaving with each other like husband and wife. The fact that the accused went in search of greener pasture for giving vent to his promiscuous sexual urge, and started a new relationship in the nature of marriage with another lady, by itself will not bring his prior relationship with the victim within the meaning of rape. Hence the proceedings initiated against the accused in connection with the commission of rape, is prima facie unsustainable.

[14] As a conclusion to the aforesaid discussion, I find that the final report and accompanying records relied on by the prosecution are not capable of bringing out the essential requirements for the prosecution of the petitioner in connection with the commission of the offences alleged against him. Therefore, the prayer of the petitioner to quash the proceedings against him, deserves to be allowed.

In the result, the petition stands allowed. The proceedings against the petitioner in S.C No.802/2019 on the files of the Additional Sessions Court-IX, Thiruvananthapuram, which arose out of Crime No.3053/2017 of Fort Police Station, Thiruvananthapuram, are hereby quashed.

APPENDIX OF CRL.MC 5348/2019	
PETITIONER ANNEXURES	
ANNEXURE A1	THE TRUE CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.3053/2017 OF FORT POLICE STATION IN THIRUVANANTHAPURAM DISTRICT.
ANNEXURE A2	THE TRUE COPY OF THE FINAL REPORT IN CRIME NO.3053/2017 OF FORT POLICE STATION IN THIRUVANANTHAPURAM DISTRICT PENDING AS S.C.NO.802/2019 ON THE FILE OF THE ADDITIONAL SESSIONS COURT-IX, THIRUVANANTHAPURAM.
ANNEXURE R2 (A)	A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF FINAL REPORT IN CRIME NO.6/18, SUBMITTED

	BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MANATHAVADI
ANNEXURE R2 (B)	A TRUE PHOTOCOPY OF THE SUMMONS TO A WITNESS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT –II,MANATHAVADI
ANNEXURE R2 (C)	A TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER TO THE CONSERVATOR OF FOREST, KOZHIKODE OBTAINED ALONG WITH A LETTER DATED 16.4.2019

2026(1)PRC97

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Shyam C Chandak)

Criminal Appeal No 1064 of 2019 dated 14/11/2025

Kalim Attarli Shaikh

Versus

State of Maharashtra; X Y Z

SEXUAL ASSAULT ON MINOR

Indian Penal Code, 1860 Sec. 354 - Code of Criminal Procedure, 1973 Sec. 164, Sec. 313 - Evidence Act, 1872 Sec. 9 - Protection of Children from Sexual Offences Act, 2012 Sec. 10, Sec. 8 - Sexual Assault on Minor - Appeal against conviction under Sec. 354 IPC and Sec. 10 POCSO Act - Victim aged five years deposed offender called her on pretext of fruit, removed her clothes and touched private parts - Testimony consistent with mother and sister and corroborated by prompt report - Medical evidence confirmed absence of penetration but supported incident - Defence of false implication rejected - Court upheld finding of guilt and sentence imposed by trial court - Appeal dismissed

Law Point: Conviction can rest on consistent and reliable testimony of child victim supported by prompt reporting and medical evidence-Absence of injury not material where sexual intent established-Appellate court should not interfere with well-reasoned conviction under POCSO Act.

Acts Referred:

Indian Penal Code, 1860 Sec. 354

Code of Criminal Procedure, 1973 Sec. 164, Sec. 313

Evidence Act, 1872 Sec. 9

Protection of Children from Sexual Offences Act, 2012 Sec. 10, Sec. 8

Counsel:

Vaibhav Hari, Kushal Mor, Tanveer Khan

JUDGEMENT

Shyam C. Chandak, J.- [1] This Appeal seeking an exception to the Judgment and Order dated 15/02/2017, in POCSO Special Case No.1094/2013, passed by the learned Designated Judge under the Protection of Children from Sexual Offences Act ("**POCSO Act**"), for Gr. Bombay thereby the Appellant was convicted for commission of the offence punishable under Section 354 of the Indian Penal Code, 1860 and under Section 10 of the POCSO Act. Under Section 354 of I.P.C., the Appellant was sentenced to suffer S.I. for one year and to pay fine of Rs.1000/-. In default, he was further sentenced to suffer S.I. for one month. Under Section 10 of the POCSO Act, he was sentenced to suffer S.I. for five years and to pay fine of Rs.5,000/-. In default, he was further sentenced to suffer S.I. for one month.

[2] Heard Mr Hari, the learned Counsel for the Appellant and Mr Khan, the learned APP for the Respondent-State. Perused the record.

[3] The prosecution story is that, the victim girl, aged 5 years (PW1) was daughter of the first informant 'Mrs. R' (PW2). The Appellant and the family of PW2 were residing in neighbour. On 28/07/2013, at about 11.00 a.m., PW2 was present at her work place. At that time, her daughter 'M' came there and told PW2 that the people residing in their Chawl had called her and she should come home soon. Therefore, immediately, PW2 came home. A crowd had gathered in front of her room. On enquiry, the members of the crowd told her that, at about 11:00 a.m., PW1 came out of the house of the Appellant by shouting. Therefore, PW2 inquired with PW1 and the later told her that the Appellant outraged her modesty. Then, the people gathered there inquired with the Appellant and tried to catch him, but he fled away. At that time, PW1 was crying. Then, PW2 took PW1 inside her room and inquired with her. PW1 disclosed that, "I was playing with 'Ms. A' in the lane, at the time, Salman's brother Kalim, residing in neighbour, showed an orange, and said us that, "will give you an orange to eat", therefore, we both went to his room, but he told 'Ms. A' to go away by giving her an orange and took me in his arms, removed my nicker and kissed me." Further, pointing at her genital, PW1 told that, "and touched the hand here." Therefore, PW2 filed the Report (Exh.10) with Shivaji Nagar Police Station, at Govandi, Mumbai therein she narrated as above. PW6 PSI Kamble recorded the Report and registered the FIR bearing C.R.No.221/2013, under Sections 354 of I.P.C. and under Section 8 of POCSO Act.

[4] During the investigation, the Police referred the victim for medical, recorded the Spot Panchanama and the statements of the witnesses. Additionally, the police obtained the statements of the witnesses recorded under Section 164 of Cr.P.C. The appellant was arrested. On completion of the investigation, police submitted the charge-sheet for the said offences.

[5] However, the trial Court framed the charge under Section 354 of the I.P.C. and under Section 10 of the POCSO Act. The Appellant abjured the guilt and claimed to be tried. His defence was of denial and false implication.

[6] The prosecution examined 6 witnesses, i.e., the victim, her mother, sister, the Civil Judge Senior Division who had recorded the statement of the victim under Section 164 of Cr.P.C., Medical Officer and PW6 PSI Vinod Kamble who had recorded the FIR and conducted the investigation.

[7] In his statement recorded under Section 313 of Cr.P.C., the Appellant denied the incriminating evidence and stated that, he was not residing in Govandi and that, the witnesses have deposed against him as they wanted to extract money from him.

[8] On appraisal of the prosecution evidence, the trial Court held the Appellant guilty of the offence punishable under Section 354 of I.P.C. and under Section 10 of POCSO Act. Hence, convicted and sentenced the Appellant as noted above. Aggrieved, the Appellant is before this Court.

[9] Mr Hari, the learned Counsel for the Appellant submitted that there is material inconsistency in the evidence of PW1, PW2 and PW5. The incident was witnessed by PW1's friend 'A', but she was not examined. The evidence indicates that a crowd had gathered in front of the house of the victim. However, no independent person from the said crowd was examined to corroborate the version of PW1, PW2 and PW5. The medical evidence does not show that PW1 had sustained any injury due to the alleged act by the Appellant. PW1 and PW2 have not identified the Appellant as the person who had sexually assaulted and outraged modesty of PW1. Therefore, the evidence of these three witnesses was not reliable. However, the trial Court and the appellate Court have relied upon their testimonies and accepted the prosecution case, which is erroneous. Therefore, the impugned judgment and Order of conviction and sentence is not correct, and it may be quashed and set-aside.

[10] In contrast, Mr Khan, the learned APP submitted that PW1 has categorically stated that the Appellant had called her and her friend 'Ms A', on the pretext of giving an orange. However, the Appellant asked the victim's friend to go away and took her inside the room. Further, the Appellant removed PW1's nicker and sexually assaulted her, who was just aged 5 years. Therefore, PW1 cried and immediately came out of the room. Then, PW1 went home and disclosed the incident to PW5. Both PW2 and PW5 have corroborated the version of the victim. The Report (Exh.10) was lodged very promptly, and it ruled out the possibility of falsely implicating the Appellant in this case. That apart, the witnesses had no reason to depose false against the Appellant. Therefore, the trial Court relied upon the prosecution story and convicted the Appellant. As such, the Appeal is devoid of any merit.

[11] To appreciate these submissions, it is necessary to look into the evidence on record. Considering the offences for which the Appellant has been convicted, the testimony of the victim-PW1 is very important.

[12] Pw1 deposed that, 'M' was her sister. Her mother PW2 was working. Kalim (Appellant) was residing in her neighbour. At the time of the incident, she was playing with 'A' and other girls in the lane. Kalim showed them an orange and called her to eat. She went to Kalim, but he held her hand and took her inside his room. She deposed that then Kalim gave an orange to 'A' and told her to go away. She deposed that Kalim then did a bad act with her. She deposed that he removed her nicker and moved his hand on her place of urination. Therefore, she cried. But he told her to keep quiet. She deposed that she then went home running. Her mother had gone for work and her sisters were at home. She deposed that she told the incident to her sisters 'S' and 'M'. The latter suggested to call their mother. She deposed that sister 'M' called PW2. PW1 deposed that, she told the incident to PW2, therefore, PW2 went to the room of Kalim to search him but the room was locked. PW1 deposed that PW2 took her to the police station. The police had inquired with her. She had disclosed the incident to the police. She was sent to the hospital along with PW2.

In the cross-examination, PW1 deposed that her father had not come to the police station. Her friend 'A' was residing near her house. She has stated that the Appellant was residing to the side of her house. Police had told her as to what she should state.

[13] Pw2 deposed that at the time of the incident, she was at her workplace. Her daughter 'M' came there, and informed that one Mosambiwala took PW1 in his room on the pretext of giving a sweet lime and thereafter, PW1 started crying and he sent her outside. PW2 deposed that, therefore, she came home alongwith daughter 'M' and inquired with PW1. At that time, PW1 told her that the Mosambiwala took her inside his house, removed her nicker and when she started crying, he sent her out. PW2 deposed that she then went to the house of Mosambiwala, but his room was locked, and he had run away. PW2 deposed that then she called her husband on the phone. Thereafter, she went to the police station alongwith her husband and PW1. PW2 deposed that she narrated the incident to the police. The police recorded her statement-cum-Report as per her narration. The police referred PW1 for the medical. PW2 has identified her Report (Exh.10). PW2 deposed that, Kalim's father was residing in front of her house. At the time of the incident, Kalim had come to his father's house.

In the cross-examination, PW2 deposed that it is not mentioned in her police statement that her daughter 'M' had informed her about the incident. She was present with PW1 at the time of recording her statement. She has denied that she herself was giving the information to the police instead of PW1. She has admitted that she went to the police station 2 to 3 hours after she came to know about the incident. She has denied that her neighbour told her about the incident and asked her to lodge a false report against the Appellant. She has denied that the Report (Exh.10) is false. She has denied that, she has deposed falsely against the Appellant.

[14] Pw5, sister of the victim, deposed that on the date of the incident, at about 11.00 a.m., her parents had gone out to work and they four sisters and a brother were at home. PW1 and her friend 'A' were playing in the lane. PW5 deposed that Kalim had

called PW1 in his house, therefore, she went there. Then, Kalim removed PW1's nicker, touched her private part and kissed her on mouth. She deposed that then PW1 pulled up her nicker. PW5 deposed that he then gave a sweet lime to PW1 and told her to go home and not to disclose the incident to anybody. She deposed that PW1 came home and told her the entire incident. PW5 deposed that she then went to Kalim's house and questioned him as to why he had committed the said act. But, he denied having committed the said act. She deposed that on hearing her noise, people from the chawl gathered there. At that time, Kalim ran away from the backside door of his room. She deposed that she then called her mother from her work place, and they told the incident to the mother. Thereafter, her mother PW1 to the police station. PW5 deposed that Kalim was residing near her house, therefore, she can identify him. Her statement was recorded by the police.

In the cross-examination, PW5 deposed that she had gone to the police station as PW2 had insisted her to give her statement. She has admitted that when she had gone to the police station, PW2 had accompanied her.

[15] Pw3 Savita Mahale, CJSD deposed that she had recorded the statement (Exh.12) of PW1 under Section 164 of Cr.P.C., in the presence of PW2. She has identified the said statement.

[16] Pw4 Dr. Supe deposed that she was working in Obsc. and Gynec. Department at Rajawadi Hospital. On 28/07/2013, at about 06:37 p.m., the police had brought PW1 to Rajawadi Hospital for medical examination. PW1 was aged years. She examined PW1 with the prior consent of PW2. PW1 and PW2 gave the history of fondling with the lower genital organs on 28/07/2013, at about 10:13 a.m., PW1 stated that she was tempted with fruit. There was no history of penetration. No history of bleeding P.V., spotting P.V. and no history of injury on her body. Accordingly, she issued the medical certificate (Exh.14).

[17] Pw6, the investigating Officer has testified that on 28/07/2012, at about 14.15 hrs., PW2 had visited the police station along with PW1 and neighbors. PW2 narrated him the incident. He recorded her narration as per her say vide Report (Exh.10) and registered this crime No.221 of 2013. PW6 deposed that the father of PW1 showed him the spot of the incident. There, he recorded the spot panchanama (Exh.18) in present of two panchas. He referred PW1 for medical examination alongwith WPC 379. Further, he recorded the statement of witnesses. He deposed that further investigation was done by API Jadhav, who arrested the accused, recorded the statement of some witnesses and filed the charge.

In the cross-examination, PW6 stated that one Mr Meraj was the owner of the room of the Appellant. He has denied that he has registered a false report against the Appellant on the say of PW2. He has denied that the Appellant was falsely implicated in this case.

[18] On careful scrutiny of the testimonies of PW1, PW2 and PW5, I find that their testimony is very consistent. Said testimonies clearly show that the offender had called PW1 and her friend 'A' at his room on the pretext of giving them fruit and then the offender told 'A' to go away. Further, the offender took PW1 inside the house, pulled her nicker and moved his hand on her place of urination. Immediately, PW1 pulled up the nicker, came out of the house and went home. At that time, PW1 was crying, which was very natural. Further, their testimonies show that, on being home, immediately, PW1 disclosed the incident to her sisters 'S' and 'M'. In turn, 'M' went to the place of working of PW2 and called her. Then, PW2 came home and enquired with PW1. At that time also, PW1 disclosed the same incident to PW2. Thus, the conduct of PW1, PW2 and PW5 appears very natural. This is followed by a prompt lodging of the Report (Exh.10). The history given to PW4 also supports what the three witnesses have deposed. There is absolutely nothing in the prosecution evidence to accept that the said Report was filed after deliberation and concocting a false story. The testimony of PW1 is also consistent with her statement under Section 164 of the Cr.P.C. Therefore, there is no hurdle to rely upon the said evidence of PW1, PW2 and PW5 that, at the time of the incident, the offender called PW1 at his room on the pretext of giving her an Orange and then, sexually assaulted her. This act was certainly an offence punishable under Section 354 of I.P.C. and Section 10 of the POCSO Act.

[19] No doubt, there is some inconsistency in the testimony of PW1, PW2 and PW3. The inconsistency is in respect of whether an Orange was offered or a Sweet Lime. Another inconsistency is that, as stated in the Report (Exh.10) and deposed by PW5, the offender had kissed PW1 on the mouth. This fact is not deposed by PW1 and PW2 in their examination-in-chief. However, said inconsistency is not sufficient to disbelieve the version of PW1 that the offender had removed her nicker and moved his hand on her place of urination.

[20] Now the question is, whether the Appellant has committed this offence or not. In the examination-in-chief, to a question, "Will you be able to identify Kalim if shown to you?", PW1 replied "Yes". However, when the learned APP questioned her as "Is the person present in the Court is the same Kalim, who resides by the side of your house and committed the filthy act with you?" PW1 answered, "No, he is not the same person." At this juncture, the trial Court observed that, "It was noticed that after seeing the accused the child was scared and looked frightened, and she avoided to look in the direction of the accused, and stated that she does not want to depose further." This was followed by a Court question that, "Is it true that the person standing before the Court is the same Kalim who resides by the side of your house and who removed your nicker and moved his hand in your urination?" PW1 answered that, "I do not know. (Nahi malum)". The next Court question was, "Did your mother tell you that today you have to attend the Court?". PW1 answered in the affirmative. Finally, she was questioned, "What else did your mother tell you?" She had answered, "Mummy told me to tell that Kalim did not do the filthy act with me."

[21] In the examination-in-chief, PW2 was specifically asked as to whether the Appellant was the same Kalim whose name was mentioned in her statement and against whom she had filed the complaint. Instead of answering 'yes' or 'no', PW2 was giving evasive answers and was asking the Court how she could identify him when she had not seen him earlier. Further, the learned trial Judge noted that, it appears that the witness was reluctant to give a specific answer, and she was under some pressure.

[22] Thus, PW1 and PW2 have not supported the prosecution to prove that the Appellant was the same person who had sexually assaulted PW1. Therefore, the learned counsel for the Appellant urged that there is not even an iota of evidence to connect him with the commission of the offence and, in fact, it stands disproved that the appellant is the person who had committed this crime against the PW1. However, based on the demeanor of the witnesses and circumstantial evidence, the learned Judge of the trial Court held that the identity of the Appellant was proved and accordingly, held him guilty of the said offences. In this regard, the learned Judge observed as under.

"25. From the observations of my learned predecessor who recorded the demeanor of the victim (PW-1) and the informant (PW-2), it appears that both the victim and the informant were under pressure while identifying the accused. The victim on being asked specifically has gone to the extent of saying that her mother had told her not to tell that Kalim did the filthy act with her. Though in the cross-examination which was conducted after 21/2 months of recording the examination-in-chief, she on being questioned by the learned advocate of the accused has stated that her mother did not tell her to tell what she should be telling in the court, but the police had told her what she should be saying. Had this been the case that she had been deposing as per the directions of the police, I am of the opinion that she would have definitely identified the accused in the court. From the evidence of the victim (PW-1) and the informant (PW-2) it is evident that the person Kalim who according to them had committed the offence was residing near the house of the victim. The informant (PW-2) had gone to the extent to say that Kalim had come to his father's house at that time. Even Dr. Supe (PW-4) who had recorded the history as given by the victim and the informant had deposed that it was told to her that the offence had been committed by the tenant neighbour. As far as the victim's sister (PW-5) is concerned, she had gone to Kalim's house to question him about the incident. It implies that Kalim was known to her. She had also stated that she could identify Kalim as he was residing near her house. It is further observable that on the day of recording of the evidence of sister of the victim (PW-5), the advocate of the accused had filed exemption application for the accused (Exh.16) and had not disputed the identity of the accused. So it would imply that the accused, if shown to the sister of the victim (PW-5) would have been identified by her as stated by her

in her examination-in-chief and also as per the exemption application (Exh.16) of the advocate of the accused."

[23] As noted by the learned Judge of the trial Court, as per the FIR (Exh.10), the address of the Appellant was the same as that mentioned in the Spot Panchanama (Exh.18) and the Arrest Form (Exh.22) and was of the same locality as that of the victim. The Spot Panchanama was admitted by the defence. The arrest form noted that the Appellant was residing at Plot No.40/Q/4, Road. No.13, Bainganwadi, Govandi, Mumbai. PSI Kamble (PW6) stated that the Appellant was residing in the same locality as that of the victim, and he was the neighbour of the victim. PW6 has identified the Appellant in the Court, as on the day of his arrest, i.e., 22.09.2013, he was present in the police station. While recording the Appellant's statement under Section 313 of the Cr.P.C., when he was asked that the victim knew him and he was residing by the side of her house, he answered the question in the affirmative. On a further question being put to him as to whether at the time of the alleged incident, his father was residing in front of the house of the informant and at that time he had come to his father's house, he had again answered in the affirmative. On another question, he had stated that he was not residing at the address mentioned in the arrest form, i.e., Plot No.40/Q/4, Road. No.13, Bainganwadi, Govandi, Mumbai, but had come there only for one day. There is no cross-examination of the witnesses whether there was any other person by the name Kalim, who was residing in the locality of the victim and who had committed the said act with the victim. In the wake of the above, the trial Court held as under:

"29. Considering the evidence on record it is amply clear that the incident had taken place. Further, though the victim and the informant had not identified the accused in court, but their demeanor and evidence of the other witnesses as to the place where the accused was residing at the relevant time, makes it clear that the accused was the person i.e. Kalim, who had committed the said offence. ..."

[24] Section 9 of the Evidence Act deals with the facts necessary to explain or introduce relevant facts etc. Said Section 9 reads:

"9. Facts necessary to explain or introduce relevant facts.- Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

[25] When the identification of a person is at issue, the information that is most beneficial in determining his identity is considered as a relevant fact. On their own, certain pieces of evidence may seem devoid of significance, but when considered in conjunction with other facts, they may acquire meaning. Certain facts support to draw an

inference. This category of fact is neither relevant as fact or a fact in issue, but where such fact support or oppose the inference provided by the facts in issue or relevant facts, they become relevant.

[26] In the backdrop of the above discussion, considering the demeanor of PW1 and PW2 and the facts and circumstances established by the prosecution evidence, I am in agreement with the finding recorded by the learned Judge of trial Court that the Appellant was proved to be the same Kalim, who had outraged the modesty of PW1. Additionally, I noticed that immediately after the incident, the Appellant fled away. The Appellant has not explained as to why he had fled, if he was innocent. Therefore, and considering the presumptions in the POCSO Act, an inference is permissible that since the Appellant had committed this crime, he ran away. In this regard, illustration (c) below said Section 9 is relevant and it reads:

"(c) A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue. The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent."

[27] It is also apt refer to the decision in *Visveswaran v. State REP. BY S.D.M.*, (2003) 6 SCC 73 therein, the Appellant before the Hon'ble Supreme Court had abducted the victim (PW1) and her husband (PW2) in the night time. He then took the victim in a hotel and committed rape on her. The Appellant had no mustache and beard at the time of committing the crime. However, when the victim and her husband were examined in the Court, said Appellant had mustache and beard and was wearing a Dhoti. Therefore, the couple could not identify him and deposed that said person is not in the Court. The other relevant witnesses also did not identify him. In the backdrop, in paragraph 11, the Hon'ble Supreme Court observed that, "It does not mean that the acquittal is to follow as a natural corroboratory from the statements of PW1 and PW2. The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a times, crimes are committed under cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. In the present case, there are clinching circumstances unerringly pointing out the accusing finger towards the appellant beyond any reasonable doubt." Hence, in paragraph 13 it is observed as under:

"13. ..., it is no doubt true that if the evidence of witnesses is examined in isolation, without having regard to the aforesaid principles, there may be considerable force in the submission that the identity of the appellant has not been established and likewise as a result of defective investigation of not holding test identification parade, the benefit should go to the appellant.

However, when the case is examined having regard to the aforesaid legal principles, the result would be otherwise.

Circumstances which have been taken into consideration against the appellant by the trial court as well as the High Court are that the appellant, a Police official, was caught from a room in a hotel. The proprietor of the hotel was examined as PW3. The hotel record (Exhibits P-4 and P5) showed booking of the room in that hotel by the appellant and also payment of advance of Rs.100/-. PW3 had also been examined by PW14. The appellant could not explain his whereabouts during the time the offence was committed. He was not cooperative during investigation. He declined to give sample of his semen. He was having different appearance at the time of examination of PW1 and PW2 in Court. At the time of commission of offence, he did not have beard and the moustaches. However, when PW1 and PW2 were examined in Court, he had beard and the moustaches and was wearing Dhoti. The testimony of PW1 and PW2 was straightforward. The witnesses, immediately after the commission of offence, had named the appellant. The non-holding of the test identification parade, having regard to the facts of the case, is not fatal and does not create any reasonable doubt in the case of the prosecution. We are unable to accept the contention that the identity of the appellant had not been proved. From the proved circumstances, it has been fully established that PW1 was picked up and raped in a hotel room as per the case set up by the prosecution by a police constable who was none other than the appellant. There is no infirmity in the impugned judgment of the High Court. "

[28] In the wake of the above, I hold that the prosecution has proved its case beyond reasonable doubt. The Appellant is rightly convicted and sentenced for the commission of the offence of Section 354 of I.P.C. and Section 10 of the POCSO Act. Therefore, I do not see any reason to set aside the conviction and the sentence imposed on the Appellant. With the result, the Appeal is dismissed.

2026(1)PRC106

THE HIGH COURT OF JUDICATURE AT MADRAS

(Hon'ble Judge N Sathish Kumar; M Jothiraman)

CrI A (Criminal Appeal) No 549 of 2019 **dated 12/11/2025**

M Ajith

Versus

State

ASSAULT ON MINOR

Indian Penal Code, 1860 Sec. 366 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 5 - Assault On Minor - Accused convicted for kidnapping and aggravated sexual assault on mentally challenged minor - Victim found undressed in sugarcane field and accused apprehended on spot - Medical report indicated tenderness and injuries confirming assault - Defence plea of false implication rejected as victim identified accused and corroboration existed from eyewitnesses - Trial court's findings based on consistent and reliable evidence - Appellate court held that absence of semen or genital injuries does not negate offence when corroborative facts prove sexual assault - Conviction and sentence upheld - Appeal Dismissed

Law Point: Conviction under POCSO Act can be sustained when ocular and circumstantial evidence clearly establish sexual assault, even in absence of semen or external injuries on victim.

Acts Referred:

Indian Penal Code, 1860 Sec. 366

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 5

Counsel:

K Raja, A Damodaran, M Arifa Thasneem

JUDGEMENT

N.Sathish Kumar, J.- [1] Challenging the judgment of conviction and sentence, dated 21.12.2018 in Special S.C.No.51 of 2018 passed by the Sessions Judge, Mahila Court, Cuddalore, the appellant / accused has filed the present criminal appeal.

[2] The accused was convicted and sentenced by the trial Court as follows:

Sl.No.	Conviction	Sentence
1.	Section 366 IPC	To undergo Rigorous Imprisonment for a period of five years with fine of Rs.1,000/- (Rupees One Thousand only), in default to pay fine, to undergo Simple Imprisonment for a period of one year.
2	Section 6 of POCSO Act read with Section 3(2)(v) of SC/ST (POA) Act, 1989 as amended by 2015 Act (Act 1 of 2016)	To undergo Imprisonment for life, with fine of Rs.20,000/- (Rupees Twenty Thousand only), in default to pay fine, to undergo Simple Imprisonment for a period of two years.
These sentences were ordered to run concurrently		

[3] Brief Facts of the Prosecution case are as follows:

3(i) the victim, aged 11 years, is a mentally retarded child and daughter of PW1. PW1, who was working as a coolie, used to leave the child with her father (PW4). On 20.07.2017, PW1 as usual went to coolie work leaving the victim child with her father. At about 03.00p.m, when the child was playing in front of the house, the accused took the child to the nearby sugar cane field. PWs 2 and 3, on hearing the sound of the child, rushed to the spot and found the child, who is mentally retarded, undressed and the accused has concealed himself in the sugar cane field. PWs 2 and 3 caught hold of the accused and brought the accused and child and they informed the occurrence to PW1, the mother of the child. PW1 also rushed to the spot and the child has identified the accused.

3(ii) Immediately, PW1 lodged the complaint (Ex.P2) before PW9, who has registered the First Information Report in Crime No.207 of 2017 under Sections 5(k) and 6 of POCSO Act under Ex.P6 and forwarded the FIR to the Court and took up the investigation. Thereafter, PW9 went to the place of occurrence and prepared Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P7) and examined the witnesses and recorded the statement and also sent the child to the hospital. PW7, the Medical Officer attached to the Government Hospital, Cuddalore examined the child, the child complained of pain in both thighs and her dresses were torn. According to psychiatrist, the child has 70% mental disability. The Medical Officer also found scratch marks on the forearm and arm. Though there were no external injuries on genitalia and no seminal stains found on the cloths, tenderness is noted by the Medical Officer on labia majora and issued Ex.P4 in this regard. PW8 (Dr.Kanagavel), the Medical Officer attached to Government Hospital examined the accused and conducted potency test and issued Ex.P5. PW10 (Tmt.Jansirani), who was working as Personal Assistant to District Supply Officer in the Office of the District Collector, Cuddalore, issued the Community Certificate under Ex.P10 to the victim and PW11, the Revenue Tahsildar, issued Community Certificate to the accused stating that he belongs to Most Backward Community. PW12 (Sub-Inspector of Police) recorded further statement of the victim and finally arrested the accused, completed the investigation and laid the final report.

[4] In order to bring on the guilt of the accused, the prosecution has examined as many as 13 witnesses and exhibited 13 documents and 4 material objects.

[5] The trial Court, after appreciation of evidence, found the accused guilty of offences under Section 366 IPC, Section 6 of POCSO Act, 2012 read with Section 3(2)(v) of the SC/ST Act, convicted the accused and sentenced him as above. The trial Court mainly framed charges for offence under Section 366 of IPC for taking the child to the sugar cane field from the guardian, Section 6 of POCSO Act for committing aggravated penetrative sexual assault and Section 3(2)(v) of SC/ST Act as the victim child belongs to Schedule Caste and the accused belongs to Most Backward Caste, the offence committed by the accused has become an offence against a member of the schedule caste. Challenging the said judgment, the accused has filed the instant appeal.

[6] It is the contention of the learned counsel for the appellant that the entire case of the prosecution is highly doubtful and the charge under Section 6 of POCSO Act has not been made out as there is no penetrative sexual assault on the victim even as per the evidence of PW7, the Medical officer attached to Government District Head Quarters Hospital, Cuddalore. It is his further contention that even the charge under Section 3(2)(v) of SC/SC Act has not been made out. According to the learned counsel, the evidence of PWs 2 and 3 is inconsistent and improved in every stage and PW1's evidence is also contrary to her earlier statement in Ex.P1. Therefore, in the absence of any evidence to show that the child was subjected to sexual assault, the appellant/accused cannot be convicted for such a grave crime. It is submitted that the appellant / accused is also a coolie worker and when he visited the sugar cane field, since he belong to other community, he has been falsely implicated. Therefore, according to learned counsel, the entire prosecution case is highly doubtful.

[7] Per contra, the learned Additional Public Prosecutor would submit that the evidence of PWs 2 and 3 clearly prove that the accused was seen in the sugar cane field where the victim child was also seen undressed and and the accused was caught red handed by PW2 and PW3 and the child has also clearly pointed out the finger at the accused. The accused was immediately taken to the police station. He would further submit that medical evidence also would clearly indicate that there is tenderness in labia majora and scratch marks were also seen in the right arm and forearm and this, in fact, substantiates the sexual assault on the victim, who is aged about 11 years. As the victim is a mentally retarded child, the accused taking advantage of the same, tried to entice the victim and therefore, his act would certainly come within the definition of penetrative sexual assault.

[8] Since the victim is a mentally retarded child, she was not in a position to give rational answers,except repeating the name of the accused and hence, her statement could not be recorded by the trial Court. The trial Court also assessed the mental capacity.

[9] Be that as it may, admittedly PW7, the Medical Officer who examined the child at the earlier point of time, has deposed to the effect that the child is suffering from mental retardation upto 70%. In such cases, the Court cannot expect that statement of the child, who was subjected to sexual assault, to be recorded and brought on record in every case. It is the evidence of PWs 1 and 4 that the child, used to be with PW4 when PW1 goes for regular coolie work. On the date of occurrence also i.e., on 20.07.2017, the child was left in the house of PW4, the father of PW1. While so, when the child was playing in front of the house of PW4, the accused enticed the child and took her to the nearby sugar cane field and caused aggravated penetrative sexual assault on the child aged about 11 years. To substantiate these charges, PWs 2 and 3 in their evidence, has stated that on hearing the cry of the child, when they rushed to the spot, they found the child undressed and the child was pointing out towards the accused and the accused was very much present in the place of occurrence and in fact, the accused has concealed

under the sugar cane, immediately the accused was caught by PWs 2 and 3 and brought to the village. PWs 2 and 3 informed the occurrence to PW1, the mother of the victim child PW1 and thereafter, the accused was taken in an auto and handed over to the police and PW1 has given Ex.P2 complaint. The law was set in motion on the basis of Ex.P2 complaint and immediately, the investigation was commenced by PW9 and the victim girl was produced before the Medical Officer. The Medical Officer (PW7) has examined the victim, though there was no evidence of seminal stains or other foreign bodies on the private parts, the dresses of the child were torn and there were scratch marks in the forearm and tenderness is also noticed in labia majora. The child was, in fact, rescued from sugar cane field by PWs 2 and 3 where the accused was very much found. It is not the case of the accused that he never went to the sugar cane field. During cross-examination, he has stated that he went to the sugar cane field and on seeing the accused in the sugar cane field, the child has become panic and started crying. It is relevant to note that there was no need whatsoever for the child to go to the sugar cane field alone. Therefore, we are of the view that the evidence of PW2 and PW3 cannot be brushed aside and there was no motive whatsoever established for the false implication of the accused.

[10] Further, when the child was seen by PW2 and PW3, the child was found undressed and the child was in fact standing alone and the accused was found in the place of occurrence itself. Their evidence clearly indicate that only the accused committed some act of sexual abuse on the child, more so in the absence of any explanation as to how he happens to be at the place of occurrence. There was no motive whatsoever established for the implication of the accused by PW2 and PW3 and there was also no previous enmity between the accused and PW 2 or PW3 for singling out the accused for such heinous crime.

[11] It is to be noted that only suggestion put up by the accused is that since the witnesses caste is inimical towards the accused caste, he has been falsely implicated. Such contention in our view has no legs to stand without any evidence in this regard. His presence in the place of occurrence at the relevant point of time is also admitted. Admittedly, the child was pointing out the finger at the accused and PWs 2 and 3 has no axe to grind against the accused and they rushed to the spot only on hearing the sound of the child and in fact, they found the victim's mouth gagged with cloth. Therefore, their evidence clearly indicate that on seeing PWs 2 and 3, the accused ran away. These facts clearly establish the complicity of the accused with the crime. We find that investigation proceeded in the right direction and we do not see any infirmity in the investigation.

[12] Admittedly, the child is below 12 years of age. Therefore, even though it is the contention of the appellant that no penetrative sexual assault has been established, it is to be noted that to bring the person within the ambit of penetrative sexual assault, it is sufficient for the prosecution to establish the fact that any object or a part of the body, not being the penis, is inserted into the vagina, urthera or anus of a child. Such act will certainly constitute a penetrative sexual assault as per Section 3 of POCSO Act. The

very nature of the injuries and the tenderness found on the private part makes it clear that in fact the accused has inserted a part of his body though there is no direct evidence for inserting the penis, it has to be necessarily held that a part of body or object was inserted which caused the tenderness on the labia majora. Therefore, his act will definitely fall within the ambit of penetrative sexual assault. As the child is below 12 years of age and is also mentally retarded, the act of the accused causing penetrative sexual assault would fall under the aggravated penetrative sexual assault. Therefore, we find that the accused is certainly punishable for the aggravated sexual assault besides for enticing the child and removing the child from the natural guardian. The charge under Section 366 IPC and Section 6 of POCSO Act has been clearly established as against the accused. Though the trial Court has also found the accused guilty of the offence under Section 3(2)(v) of SC/ST (POA) Act, on a careful perusal of the entire materials, we are of the view that the trial Court finding the guilt of the accused under Section 3(2)(v) is not sustainable. Absolutely there is no evidence on record to show that the entire offence itself purported only on the ground of caste of the minor. The entire evidence projected by the prosecution clearly shows that only on seeing the child, he took the child. It is not the case of the prosecution that the accused is already aware of the child's caste and he committed such offence knowing that the child belongs to a particular community. Therefore, in our view the charge under Section 3(2)(v) of SC/ST (POA) Act is not made out. Hence, the finding recorded by the trial Court in this regard is liable to be set aside. However, the finding recorded by the trial Court as far as the proof of charge under Section 366 IPC and Section 6 of POCSO is upheld.

[13] With regard to the punishment, as far as Section 366 of IPC is concerned, we confirm the punishment. In respect of offence under Section 6 of POCSO Act is concerned, the trial Court has awarded life imprisonment. It is to be noted that the period of life imprisonment was introduced by Act 25 of 2019 with effect from 16.08.2019. Prior to that for aggravated penetrative sexual assault, the punishment is imprisonment for a term which shall not be less than 10 years, which may extend to imprisonment for life and shall also pay a fine whereas the trial Court imposed life sentence. We are of the view that as the attempt has been made only to penetrate, which resulted in tenderness and no semens were found, though aggravated penetrative sexual assault has been made out, the accused shall be punished for a period of 10 years in stead of life sentence. Therefore, the trial court imposing life sentence for the offence under Section 6 of POCSO Act is liable to be modified since the occurrence took place prior to Act 25 of 2019.

Accordingly, the appeal is allowed in part and the conviction rendered by the trial Court under judgment dated 21.12.2018 in Special Session Case No.51 of 2018 for the offences under Section 366 of IPC for a period of 5 years and for the offence under Section 6 of POCSO Act is confirmed and the sentence of life imprisonment imposed by the trial Court for offence under Section 6 of POCSO Act is modified to 10 years of rigorous imprisonment and the fine imposed by the trial Court is confirmed. The

conviction rendered by the trial Court under Section 3(2)(v) of the SC/ST Act is set aside. The sentences shall run concurrently. The trial Court shall take steps to secure the appellant to serve the remaining period of sentence

2026(1)PRC112

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Debangsu Basak; Md Shabbar Rashidi)
Cr A (Criminal Appeal) No 751 of 2019 **dated 11/11/2025**

Jyotsna Ghosh

Versus

State of West Bengal and Another

ACQUITTAL IN RAPE CASE

Indian Penal Code, 1860 Sec. 341, Sec. 376 - Code of Criminal Procedure, 1973 Sec. 164, Sec. 313 - Evidence Act, 1872 Sec. 114A - Protection of Children from Sexual Offences Act, 2012 Sec. 2 - Acquittal In Rape Case - Appeal filed by de-facto complainant against acquittal of accused for offence of rape upon deaf and dumb victim - Evidence of victim and her parents supported prosecution case - Medical report did not reveal recent signs of rape though pregnancy confirmed - Trial court found inconsistencies and absence of proof regarding victim's age and treated her as not a child - Appellate court observed that presumption under Section 114A of Evidence Act not rebutted and testimony of victim was credible - Failure to consider special circumstances of disabled victim held erroneous - Judgment of acquittal set aside and conviction directed - Case remanded for appropriate sentencing - Appeal Allowed

Law Point: When evidence of disabled victim of sexual assault is consistent and supported by medical proof of pregnancy, conviction can be based solely on her testimony under Section 114A of Evidence Act; lack of resistance not fatal.

Acts Referred:

Indian Penal Code, 1860 Sec. 341, Sec. 376

Code of Criminal Procedure, 1973 Sec. 164, Sec. 313

Evidence Act, 1872 Sec. 114A

Protection of Children from Sexual Offences Act, 2012 Sec. 2

Counsel:

Avik Ghatak, Afreen Begum, Dibyo Mukherjee, Imran Ali, Debjani Sahu

JUDGEMENT

Md. Shabbar Rashidi, J.- [1] The instant appeal, at the behest of the de-facto complainant is in assailment of the impugned judgment and order dated August 19, 2019 passed by learned Additional Sessions Judge, 2nd Fast Track Court, Asansol, in Sessions Trial No. 06 of 2009 arising out of Sessions Case No. 341 of 2007.

[2] By the impugned judgment and order, the respondent/accused Abhijit Gope @ Bapi was found not guilty and was acquitted of the charges under Sections 341/376 of the Indian Penal Code.

[3] It is submitted by learned advocate for the appellant that the impugned judgment and order was passed by learned Trial Court merely on conjectures and surmises without evaluating the evidence on record. The findings arrived at by the learned Trial Court were misconceived and misdirected.

[4] Learned advocate for the appellant further submitted that the learned Trial Court failed to appreciate the evidence led at the trial in its proper perspective and came to an erroneous finding. The Trial Court misapplied the authorities cited on behalf of the defence without considering the facts and circumstances obtained in the present case.

[5] According to learned advocate for the appellant, the learned Court failed to appreciate that the victim happened to be deaf and dumb, and it was highly improbable that she or her family members would falsely implicate the accused.

[6] Learned advocate for the appellant also submitted that evidence led at the trial, convincingly established the guilt of the accused warranting a conviction. Learned Trial Court was not justified in acquitting the accused. As such the impugned judgment and order is liable to be set aside.

[7] Learned advocate for the appellant also submitted that the evidence adduced on behalf of the prosecution established sexual intercourse upon the victim. Since the victim had named the accused as the perpetrator, it gave rise to a presumption in terms of Section 114A of the Indian Evidence Act against the accused and the onus shifted on to the accused. In support of his contention, learned advocate for the appellant relied upon an authority Vimalanathan vs State, 2007 SCC Online Cal 113 .

[8] On the other hand, learned advocate for the respondents stood by the impugned judgment and order. He contended that the prosecution failed to establish the charges levelled against the accused with the help of unimpeachable evidence, enough to secure conviction of the accused. According to learned advocate for the respondent, learned Trial Court was quite justified in acquitting the accused.

[9] The mother of the victim lodged a written complaint with Officer-in-Charge of Raniganj Police Station on September 9, 2004 to the effect that her daughter was deaf and dumb. About 2 1/2 - 3 months prior to the date of lodging the written complaint, the daughter of defacto complainant went to take bath in the pond of the village at noon. At that time, the accused, finding the victim alone, dragged her into the nearby bushes and forcibly committed **rape** upon her. He also threatened to kill her if she disclosed the

incident to anyone. The defacto complainant also stated that the victim went quiet after the incident. A few days prior to September 9, 2004, the victim was vomiting and was taken to a doctor where it was discovered that she was pregnant. When the de-facto complainant asked the victim as to the person responsible, she identified the accused. The written complaint also discloses that after such discovery, the de-facto complainant and the villagers went to the house of the accused when he admitted to have committed **rape** upon the victim and promised to marry her but later he refused to marry.

[10] On the basis of such written complaint, Raniganj PS Case No. 135 of 2004 dated September 9, 2004 under Sections 341/376 of the Indian Penal Code was started against the accused.

[11] Police took up investigation and on completion thereof, submitted charge-sheet under the aforesaid sections against the accused. Accordingly, on the basis of materials in the case diary, charges under Sections 341/376 of the Indian Penal Code were framed against the accused/respondent on January 14, 2009. The accused, being read over and explained the substance of charges, pleaded not guilty to the charges and claimed to be tried.

[12] In order to substantiate the charges, prosecution adduced as many as 13 ocular witnesses. In addition, prosecution also relied upon certain documentary as well as material evidence.

[13] The de-facto complainant herself deposed as PW1. She reiterated in her deposition that her victim-daughter was deaf and dumb. The accused committed **rape** upon her, whom, she identified in court. She further stated that the victim reported the incident to her by gestures. On medical examination of the victim, it revealed that she had conceived. The accused promised to marry the victim but later he refused. Thereafter, PW1 lodged the written complaint scribed by one Rina Gope as per her instructions which was read over and explained to her and she put her left thumb impression thereon.

[14] In her cross-examination, PW1 stated that there was a meeting in the party office prior to lodging of the case, where the family of the accused refused and denied the incident. She further stated that the written complaint was drafted inside the party office. She, however, could not identify the persons/villagers who accompanied her when she visited the house of the accused. She was even not able to state as to with whom she visited the house of the accused whether in the evening or morning.

[15] An ambulance driver of Asansol Sub-divisional Hospital was examined as PW2. He identified and proved his signature on the seizure list dated September 10, 2004. He, however, could not state as to what was seized by such seizure list.

[16] The victim deposed as PW3. She stated that a few years ago (from July 31, 2012), the accused forcibly committed **rape** upon her by shutting her mouth with his hands while she was taking bath in a pond. She further stated that the accused

committed **rape** upon her thrice on different occasions; as a result, she became pregnant. She disclosed the incident to her mother. Her mother approached the accused to marry the victim but he refused. Thereafter, her mother lodged a case with the police. PW3 was medically examined by a doctor and she put her signatures on some papers (exhibits 2/1 and 3/1). Some photographs were also taken during the medical examination. PW3 also recorded her statement before learned Magistrate through the interpreter who assisted her in her deposition. She proved her signatures on the statement recorded under Section 164 of the Code of Criminal Procedure (exhibit 1 series). She identified the accused in Court as the perpetrator.

[17] In her cross-examination, PW3 stated that the accused committed **rape** upon her six times on different occasions. She further stated that the accused committed **rape** upon her twice in his house and five times on the bank of the pond where she used to take bath when no one was present there. The victim was **raped** by the accused second time after three days of the first incident of **rape**. She was **raped** again after 5/7 days. The accused committed **rape** upon her at his house after an interval of 2/3 days. There was no one present at the house of accused. She also stated that her house and that of the accused were adjacent. The two families had visiting terms at each other's house and the victim knew the accused from her childhood. PW3 further stated in her cross examination that she reported all the incidents to her mother after 3/5 days of the last incident. She was carrying for three months at the time of her medical examination. Later, her pregnancy was terminated.

[18] Pw4 is the father of the victim. He stated that the victim was deaf and dumb. When she went to take bath in the village pond, seeing that she was alone, the accused committed **rape** upon her. His daughter came back and reported the incident to her mother who, in turn, reported the same to PW4. The victim became pregnant and thereafter, his wife informed the incident to police. He further stated that prior to the information to police; he informed the matter to his neighbours. The police arranged for medical examination of the victim. PW4 identified the accused in court. He was interrogated by police. He further stated that after the incident, his wife took the victim to the house of the accused when he refused to accept his guilt.

[19] In his cross examination, PW4 stated that the victim identified the accused in the police station itself on September 9, 2004 when he visited police station accompanied by his wife. PW4 stated in his cross examination that he was not expecting that the accused should marry his daughter. However, he admitted that there was a meeting in the party office where, the accused refused to marry the victim. He also denied his knowledge that the victim was carrying for 3/4 months when she was first taken to police. Although, PW4 stated in such cross examination that he did not attend the meeting in the party office but at a later stage of his cross examination he admitted that he informed the incident to the party office. He also stated that after 2/3 months of the incident, he came to know about **rape** committed upon his daughter. PW4 admitted in his cross examination that the husband of the scribe of the written complaint, namely

Basudeb Gope was full blooded brother of his wife. He also stated that Shyamapada Gope is maternal uncle of accused Abhijit Gope. He however, denied his knowledge but did not specifically deny pending land disputes between Basudeb Gope and Shyamapada Gope.

[20] A medical officer deposed as PW5. He stated that on September 9, 2004, he examined the victim girl at Asansol Subdivisional hospital in connection with Raniganj PS Case No. 135 of 2004 dated September 9, 2004. He further stated that on such examination, he did not find any recent sign of **rape**, sign of habitual intercourse. He also did not find any injury on the private parts of the victim though; he found old sign of hymen rupture. No foreign body was detected in the private parts. Uterus of the victim was found antverted, bulky, cervix soft. According to the opinion of PW5, the patient had probably conceived subject to confirmation by tests. PW5 proved his report in this regard (exhibit 4).

[21] Another medical officer of Asansol Sub-divisional hospital who examined the accused was examined as PW6. He stated that on September 29, 2004 he examined the accused in connection with Raniganj PS Case No. 135 of 2004 dated September 9, 2004. On such examination, he found that the accused was capable of sexual intercourse. There was however, no injury on his private parts. His semen was preserved. PW6 proved the injury report and his signature thereon (exhibits 4/1 and 4/2).

[22] The scribe of the written complaint deposed as PW7. She stated that she knew the victim and her mother. The victim is deaf and dumb. She further stated that she scribed the written complaint as per the instructions of the victim and her mother and handed over the same to police in their presence. At that time, victim was aged about 15 years. PW7 also stated that she was informed by the complainant that the victim was **raped** by the accused while she was going to take bath in the pond. The accused dragged her into the bushes and threatened her not to disclose the incident to anybody. The written complaint was lodged on September 9, 2004. PW7 proved the written complaint and her signature thereon (exhibit 5 and 5/1). PW7 also stated that the incident took place 2 1/2 /3 months prior to the date of lodging of the written complaint. She claimed to identify the accused. She further stated that the victim narrated to her by signs that she became pregnant due to **rape** committed by accused. In her cross examination, PW7 stated that the victim and her mother visited her house where she scribed the written complaint at their instruction.

[23] The store keeper of Asansol Sub-divisional hospital was examined as PW8. He is a seizure list witness. He proved his signature on the seizure lists dated September 10, 2004 and September 29, 2004 (exhibits 1/2 and 6), respectively. He had no personal knowledge about the case.

[24] A lady Assistant Sub-inspector of police was examined as PW9. She stated that she accompanied the victim to learned Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure. She had no knowledge about the case.

[25] An employee of deaf and dumb school deposed as PW10. He stated that he, as per the requisition of Asansol Police Station, acted as an interpreter during recording of the statement of the victim under Section 164 of the Code of Criminal Procedure. The victim answered the learned Magistrate by gestures and PW10 interpreted the gestures to learned Magistrate in English language which was recorded by him. PW10 proved his signature on the statement as interpreter (exhibit 1/1). After recording the statement, PW10 gave a certificate to the effect that it was recorded by learned Magistrate as stated by the victim and interpreted by him. He also read over and explained the recorded statement to the victim and she signed such statement after being satisfied of its correctness.

[26] A radiologist attached to Asansol hospital was examined by the prosecution as PW11. He examined the victim and conducted her x-ray on September 11, 2004. On the basis of his examination and xray reports, he opined that the victim was aged between 14 and 17 years. He proved the medical report and his signature thereon (exhibits 2 and 2/2) respectively. PW11 was cross examined by the defence at length and in such cross examination; he admitted the bone age of the victim to be above 17 years.

[27] Another medical officer of Asansol Sub-divisional hospital was examined as PW12. He stated that in the month of September 2004, he examined the victim who was admitted with complain of huge bleeding of her pregnancy. She was aborted.

[28] The investigating officer of the case deposed as PW13. He proved the endorsement of the Officer-in-Charge of Raniganj police station on the written complaint (exhibit 5). On the basis of such written complaint, the officer-in-charge started specific case by filling up formal First Information Report (exhibit 8). PW13 was endorsed with the investigation of the case. PW13 also narrated the various steps taken by him in the investigation of the case. He visited the place of occurrence, prepared rough sketch map of the same with index. He also arranged for medical examination of the victim at Asansol hospital and thereafter he forwarded the victim for recording her statement by learned Magistrate. PW13 also seized vaginal swab and other articles under proper seizure lists. He also arrested the accused whom he identified in court. PW13 was also cross examined at length.

[29] Upon conclusion of the evidence on behalf of the prosecution, the accused was examined under Section 313 of the Code of Criminal Procedure. The accused, in such examination, pleaded innocence denying the allegation appearing against him in the evidence of the prosecution. He stated that no such incident as appearing from the evidence of the prosecution did ever happen and the allegations were false. He however, declined to adduce any defence witness.

[30] According to the case made out by the prosecution, the accused/private respondent committed **rape** upon the victim, a deaf and dumb girl, taking advantage of her loneliness, while she went to village pond to take bath in the afternoon.

[31] Learned Trial Court, in the impugned judgment, comprehensively considered the age of the victim at the relevant time. Although the parents of the victim, PW1 and PW4, in their deposition, did not state the age of victim at the time of occurrence. PW7 stated the age of the victim as 15 years. No documentary evidence was adduced on behalf of the prosecution in support of the age of the victim. The victim underwent ossification test which was also considered by learned Trial Court and upon consideration of such report coupled with evidence led at the trial, learned Trial Court held that the victim was not a child.

[32] As noted above, no documentary evidence has been brought on record to establish the age of the victim at the time of incident. The parents of the victim have not deposed, in their deposition, to establish that the victim was a child at the relevant time. In course of trial of the instant case, either the prosecution or the present appellants never approached the court to invoke the provisions of Protection of Children from Sexual Offences Act, 2012. Section 2 (1) (d) of the Act of 2012 defines a child as 'any person below the age of 18 years'.

[33] The evidence of the medical officer, PW11 goes to show that although, in his deposition, on the basis of ageing of bones, he opined the age of the victim between 14 and 17 but in his cross examination, he agreed to the suggestion that the age of bones of the victim were above 17 years. It is settled position that the medical determination of age, should always be read with a margin of 2 years on either side. Moreover, at the time of deposition, PW3, the victim, disclosed her age as 25 years. She deposed on July 31, 2012 whereas, the incident allegedly occurred sometimes before September 9, 2004. By such calculation, the victim was aged more than 17 years at the time of incident. PW1, the mother of the victim, stated her age to be 45 years at the time of her deposition on October 23, 2009. Similarly, the father of the victim, PW4, disclosed his age at the time of deposition on April 20, 2013 as 58 years. The victim is the second daughter of her parents. Her elder sister was already married. Therefore, taking into account the aforesaid facts and circumstances together with the medical evidence, there appears nothing in the evidence to hold that the victim was a child at the relevant point of time.

[34] As noted hereinbefore, the accused/private respondent allegedly committed **rape** upon the victim, when she went to take bath in the village pond in an afternoon. The de-facto complainant, PW1 stated in her deposition that the private respondent/accused committed **rape** upon the victim, when she went to take bath in the village pond. The incident was reported to her by the victim by gestures. The victim herself deposed as PW3. In her deposition, PW3 also stated that the accused forcibly committed **rape** upon her by shutting her mouth with his hands, while she was taking bath in a pond. She stated in her evidence that she reported the incident to her mother. Her mother approached the accused when he admitted his guilt and promised to marry the victim. Later, he refused the marriage whereupon; PW1 lodged a complaint with the police about the incident.

[35] Learned advocate for the appellant, relying on **Vimalanathan** (supra), contended that there is overwhelming evidence on record that the private respondent/accused committed **rape** upon the victim. It was pointed out that the victim, PW3, has made a resounding statement that the private respondent/accused committed **rape** upon her forcibly, against her will by putting his hand on her mouth. Therefore, a presumption under Section 114A of Indian Evidence Act, 1872, is immediately pressed into service. Learned advocate for the appellant also submitted that the statement of the victim, in view of the presumption expounded under Section 114A of Indian Evidence Act, is sufficient enough to convict the accused for an offence under Section 376 of the Indian Penal Code. In such view of the facts, the learned Trial Court was not justified in acquitting the private respondent/accused.

[36] In **Vimalanathan** (supra), a Coordinate Bench of this Court observed that,

"7. Offence of **rape** punishable under section 376 IPC is a crime having a special feature. In criminal jurisprudence the degree of proof is much more strict than that of any other proceeding and the prosecution is having an onerous burden of proof to the effect that the evidence should draw only logical conclusion that it is the accused and nobody else who committed the crime. Such degree of proof is however relaxed in a case under section 376. The legislature brought a change in the evidence law. Section 114 of the Indian Evidence Act, 1872 had undergone a change by incorporation of section 114A which was inserted by the Act of 1983. The said section being relevant herein is quoted below:

"114A. Presumption as to absence of consent in certain prosecutions for **rape**. In a prosecution for **rape** under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Penal Code, 1860, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been **raped** and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

8. Now the evidence of the victim is only relevant to convict the accused. This amendment has a social backdrop. In our society when a girl is **raped** she is not looked at by common people in the way it ought to have been. Hence, the victims seldom report such crime to the police authorities in the fear of being discarded by the society. Moreover, the stringency in the matter of proof of the crime might embarrass the victim meaning thereby she is **raped** twice, once at the time of commission of the crime and secondly at the time of trial. To obviate such misery and to bring to book such criminals more easily the legislators thought it fit to amend the evidence law.

9. Relying on the said amended provision the Apex Court in the cases cited by the prosecution referred to above time and again observed that the

statement of the victim is sufficient enough for conviction of the accused meaning, thereby once the victim comes to the witness box and makes a statement that she was **raped** by the accused the onus is on the accused to prove that such statement by no stretch of imagination could be believed by the Court and the materials on record could lead to only one conclusion that the accused was falsely implicated in the case out of malice or for extraneous consideration. Such is not the case here."

[37] However, the presumption attached to Section 114A of the Evidence Act is always rebuttable. Moreover, it is pressed into service upon proof that there was sexual intercourse by the private respondent/accused, and that too, without the consent of the victim. A medical officer, PW6, testified on medical examination that the private respondent/accused was capable of sexual intercourse.

[38] The private respondent/accused did never admit that he had sexual intercourse with the victim. On the contrary, the trend of cross examination of the prosecution witnesses, goes to show that the private respondent/accused set out a case, that he was chosen by family of the victim as prospective husband of the victim and with a view to put pressure upon him, the mother of the victim implicated her in a false case, as he refused to marry the victim.

[39] Admittedly, the instant case was initiated after a few months of the alleged incident. In fact, the evidence on record goes to show that the victim reported the incident to her mother when she was vomiting. She was taken to a doctor, PW5, who on examination of the victim found and opined that on such examination, he did not find any recent sign of **rape**, though; there was sign of habitual intercourse. PW5 also did not find any injury on the private parts of the victim though; he found old sign of hymen rupture. No foreign body was detected in the private parts. Uterus of the victim was found antverted, bulky, cervix soft. According to the opinion of PW5, the patient had probably conceived subject to confirmation by tests. The investigating officer has testified that since the pregnancy of the victim was aborted by PW12, DNA test could not be conducted, in order to ascertain that the pregnancy of the victim was fathered by private respondent/accused or that he had sexual intercourse with the victim.

[40] For the sake of argument, if we assume that the accused had sexual intercourse upon the victim, in view of the presumption under Section 114A of the Indian Evidence Act, it is to be established that such intercourse was without the consent of the victim. The victim, PW3, has stated so in her deposition. She stated that the private respondent/accused committed **rape** upon her forcefully and she did not consent to such sexual intercourse.

[41] Is such statement on the part of the PW3 sufficient to secure conviction of the private respondent/accused based on the presumption? Should the court not go into such statement to weigh its trustworthiness?

[42] The statement of the victim, PW3, states that the accused forcibly committed **rape** upon her by shutting her mouth with his hands while she was taking bath in a pond. PW3, in same breadth went on to state that that the accused committed **rape** upon her thrice on different occasions; as a result of which, she became pregnant. There is no case of the prosecution that the victim was ever kept under confinement by the accused. If that be so, then there appears no explanation on record as what prevented the victim or her relatives from lodging contemporary complaints when the victim was **raped** on earlier occasions.

[43] Pw3 also stated in her deposition that the accused committed **rape** upon her six times on different occasions. She further stated that the accused committed **rape** upon her twice in his house and five times on the bank of the pond where she used to take bath when no one was present there. The victim was **raped** by the accused second time after three days of the first incident of **rape**. She was **raped** again after 5/7 days. The accused committed **rape** upon her at his house after an interval of 2/3 days. The aforesaid incidents are spread over a span of considerable period of time. All this time, the victim or her relatives did not complain of **rape** or sexual intercourse.

[44] The evidence on record also discloses that even after the last incident, the victim did not report the incident until it was discovered that she was carrying. Knowing of the pregnancy, the mother of the victim, instead of reporting it to the police authorities, first took it to the party office and allegedly tried to obtain an assurance from the accused that he would marry the victim. When such attempt went futile, then only, PW1 came up with a complaint before the police. In view of the aforesaid circumstances, it is quite difficult to believe the statement of the victim that she was **raped** or the accused had sexual intercourse with her against her will and consent. In fact, it is also not established beyond all doubts that it was the private respondent/ accused who had sexual intercourse with the victim, less to talk of, against her will and consent.

[45] Therefore, in the light of discussions made hereinbefore, we are of the view that on the basis of evidence on record, the learned Trial Court was justified in acquitting the private respondent/accused. We find no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

[46] Consequently, the instant appeal being CRA 751 of 2019 is dismissed without any order as costs.

[47] Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[48] I agree.

2026(1)PRC122

THE HIGH COURT OF JUDICATURE AT MADRAS

(Hon'ble Judge N Sathish Kumar; M Jothiraman)

Crl A (Criminal Appeal) No 646 of 2019 **dated 11/11/2025***Sarvanan***Versus***State***SEXUAL ASSAULT ON MINOR DAUGHTERS**

Indian Penal Code, 1860 Sec. 506 - Code of Criminal Procedure, 1973 Sec. 164, Sec. 313, Sec. 207 - Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 9, Sec. 10, Sec. 7, Sec. 5, Sec. 8, Sec. 4 - Sexual Assault on Minor Daughters - Accused married twice and lived with second wife and children - Accused habitually consumed alcohol and subjected his family to harassment - During separation of spouses, two minor daughters stayed with accused - Accused sexually assaulted both daughters repeatedly and threatened them with dire consequences - Complaint given by welfare officer led to registration of case and medical examination of victims confirmed sexual assault - Trial Court convicted accused under provisions of POCSO Act - Defence argued delay in complaint and false implication due to strained relations - Court held delay properly explained and evidence of victims corroborated by medical records - Conviction and sentence of life imprisonment confirmed - Judgment upheld - Conviction sustained - Sentence confirmed - Appeal Dismissed

Law Point: Evidence of victims in cases under POCSO Act when consistent and corroborated by medical testimony suffices for conviction even if complaint is delayed; delay explained does not weaken prosecution case.

Acts Referred:

Indian Penal Code, 1860 Sec. 506

Code of Criminal Procedure, 1973 Sec. 164, Sec. 313, Sec. 207

Protection of Children from Sexual Offences Act, 2012 Sec. 6, Sec. 9, Sec. 10, Sec. 7, Sec. 5, Sec. 8, Sec. 4

Counsel:

V Thamizhanban, A Damodaran, M Aritha Thasneem

JUDGEMENT**M. Jothiraman, J.-**

[1] The sole accused in Crime No.9/2016 on the file of the respondent herein is the appellant herein. This Criminal Appeal has been filed challenging the judgment of conviction and sentenced dated 12.02.2019 in Spl.SC.No.64 of 2016 passed by the

learned Sessions Judge, Magalir Needhimandram, Salem, in and by which the appellant was convicted under sections 4 and 10 of The Protection of Children from Sexual Offences Act, 2012 [in short "POCSO Act"] and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offence under Section 4 of POCSO Act and sentenced to undergo 7 years imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offence under Section 10 of the POCSO Act.

[2] Facts leading to the filing of this appeal are as follows:

2.1. The accused Saravanan, who belongs to Thagapatti Village, Salem, married one Thangammal. Out of wedlock, he begot two female children and one male child. Subsequently, he married one Sasikala and he changed the name of Sasikala as Sagunthala and lived in various places in Salem like Thagapatty, Linemedu and Maniyanoor. The accused and Sagunthala have four children namely, XXX / PW2, YYY / PW3, Kousika and Hariharan. All the children left the accused and staying in Children Protection and Welfare Home.

2.2. The accused used to come to home daily in drunken manner and when the same was questioned by his wife and children, he used to beat them. Therefore, misunderstanding arose between the husband and wife and during November, 2015, the accused's wife, left the female children XXX/ PW2 and YYY / PW3 with the accused and went by taking other children with her. Thereafter, the accused and his two female children shifted to a rental premises belonging to one Raju. While that being so, the accused /father attempted to give sexual harassment to his 16 years old female child XXX / PW2. In further continuance, the accused also gave sexual harassment to her younger daughter YYY / PW3, who is 13 years old, by pressing his breast and also done gave forceful insertion of his fingers over her private parts. The accused further threatened PW2 with dire consequences if she says the sexual assault done on her to anybody.

2.3. PW1 - Tmt.Gandhimathi is a working member of the Salem Kumarapatti Children Welfare Organization. On 22.04.2014, through Erode Children Welfare Organization, the two female children namely Madhubala and Kausik @ Kausalya were produced and allowed to stay in the Salem Children Welfare Organization. They informed the President of the Organization that they also have one brother the sister, based on which YYY/ PW3 and Hariharan were take into safe custody from a home at Nethimedu. Sangeetha also gave information that her elder sister XXX/ PW2 is residing along with her father at Thathagapatti, based on which nearly after ten days, Annadanampatti police found XXX / PW2.

2.4. On enquiry, PW2 informed about the forceful sexual penetration done by her father Saravanan and also the same atrocious immoral activities done on her sister YYY/ PW3. On enquiry, PW3 also reiterated the very same version of her sister / PW2. The three female children and one male child were given education by keeping them under safe custody in Children Welfare Homes.

2.5. PW1 gave complaint under Ex.P1 to All Women Police Station, Salem, based on which the police enquired PWs.2 and 3 in the presence of witnesses Mageswari / PW4, who is working as Office Assistant and Typist and one Suguna, in which they narrated the sexual assault done on them by their father Saravanan to the police officials. When she was produced and enquired before the Judicial Magistrate Court at Salem, she narrated the events. Ex.P2 is the confession given by her, which was recorded as video in the Compact Disk-M.O.1. Ex.P3 is the confession given by PW2 before the Judicial Magistrate Court, Salem.

2.6. PW12 - Sayidha is the Women Inspector of Police, Salem Town Police Station. While she was on duty on 22.06.2016, at 11.00 a.m. She received a written complaint from PW1 - Gandhimathi at the said police station, based on which, she registered a case in Crime No.9/2016 under Sections 6 r/w. 5(1), 8 r/w.7 of POCSO Act and Section 506(ii) IPC. Ex.P19 is the First Information Report. PW12 sent the FIR along with the complaint to the Mahila Court and also sent copies thereof to other officials concerned. PW12 conducted investigation and went along with the complainant to Kumaraswamipatti Children Welfare Reception Home, where he saw PW2 and PW3 who were in safe custody and recorded their statements in the presence of PW4-Mageswari. He prepared the Medical Memo and sent PWs.2 and 3 along with Police Constable HC1185 - Jeyalakshmi with the help of the mother of the Reception Home, namely Suguna for medical examination at the Salem Kumaramangalam Government Medical College Hospital at 3.00 p.m.

2.7. PW10 is Doctor Priyadharshi and Professor attached to the Government Maternity Hospital. While she was on duty, on 22.06.2015 at 5.00 p.m., PW2 was produced for medical examination by the HC 1185 Jeyalakshmi. PW2 informed to PW10 that she was given sexual harassment by her father for the past 2 years. When PW2 was physically examined, there was no external injuries and her hymen was torn and two fingers can easily penetrate. He took the sample of vaginal fluids from the private part of PW2 and sent for chemical analysis. The chemical analysis does not contain any sperm cells. PW10 gave opinion that PW2 could have been compelled to have sexual intercourse. PW10 prepared the Accident Register Ex.P11 for PW2. Medical Certificate given by PW10 is Ex.P12. S.O.C. Form is Ex.P13. Chemical Analysis and Final Opinion Report is Ex.P14. PW10 also examined PW3 on the same day. Ex.P15 is the Accident Register of PW3. Medical Examination Certificate is Ex.P16. S.O.C. Form is Ex.P17 and Final Medical Report is Ex.P18.

2.8. PW12 - Investigating Officer, in continuation of the investigation, visited the scene of occurrence, namely the house located behind at Thadapakatti Housing Board in the presence of the witnesses Babu/ PW6 and one Ramesh and prepared the Observation Mahazar - Ex.P6 and Rough Sketch - Ex.P20. She also recorded the statements of the Mahazar witnesses. She also examined the witness Suguna. She also sent requisition for recording statement from PWs.2 and 3 under Section 164 CrPC and also sent requisition to the Mahila Court for medical examination of the accused

through Grade I P.C. 394. Ex.P21 is the Medical Requisition Memo. 164 CrPC statement requisition memo is Ex.P22. The proceedings to record 164 CrPC statement received from the Court is Ex.P23. On the same day, based on the order received from Court, the accused was sent for medical examination at Salem Government Moham Kumaramangalam Hospital and sent back to the Central Prison, Salem.

2.9. PW9 is Dr.Gokularaman, Salem Government Hospital, who examined the accused. Ex.P8 is the Medical Requisition.letter. PW9 examined the accused and opined that the accused is potent and gave the Medical Certificate Ex.P9 and also certified the age of the accused as 49, vide Certificate Ex.P10.

2.10. Thereafter, PW12 also examined the House Owner Raju - PW11 and PW7 and recorded their statements. PW7 - Salam is having a Dyeing Shop in Thadapatti. The accused used to visit the tea shop located near his dyeing shop. PW8 - Prabha is the Headmistress of the school where PWs.2 and 3 studied. Ex.P6 and Ex.P7 are the Registration Certificates issued by the school in respect of PW2 and PW3 respectively and in the said registration certificates, the date of birth of PW2 is mentioned as 18.07.2002 and PW3 is mentioned as 11.07.2005.

2.11. PW12 also examined the PW10 - Dr.Priyadharshini and after completion of investigation laid charge sheet, framing charges against the accused under Sections 6 r/w. 5(1) & 8 r/w.7, 10 r/w. 9(I) of POCSO Act and Section 506(i) IPC.

2.12. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Mahila Court Salem in Special S.C.No.64 of 2016, for trial. The trial Court framed charges under Section 4(2) of POCSO Act (2 counts), Section 8 and 9 r/w. 10 of POCSO Act and Section 506(ii) IPC. When questioned, the accused pleaded not guilty.

2.13. To prove the case, the prosecution examined 12 witnesses, marked 23 exhibits and produced 1 Material Object. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, his second wife Sakundhala was examined as DW1 and no document was marked.

2.14. The trial Court, after having considered the oral and documentary evidence, found that the prosecution had proved the guilt beyond reasonable doubt and convicted and sentenced him as stated above, against which the accused has preferred the instant Criminal Appeal.

[3] The learned counsel appearing for the appellant would submit that the Trial Court has failed to consider the fact that PW3 and PW2 were examined by the Child Welfare Committee as early as on 04.05.2016, whereas the complaint under Ex.P1 was lodged only on 08.02.2017 after a lapse of more than 10 months. The Trial Court has also failed to consider the fact that PW2 categorically admits that the accused and her mother are in the habit of consuming liquor and PW2 was roaming around with a boy and the same was not liked by the appellant / accused and hence a false case has been

foisted against her father / appellant. The Trial Court has also failed to consider the fact that if really such incident would have taken place, PWs.2 and 3 would have revealed the incident to their neighbours or to her mother / DW1, but no such complaint was given to the neighbours by them.

[4] Per contra, learned Additional Public Prosecutor appearing for the respondent / State would submit that the victim girls, namely PWs.2 and 3 have categorically deposed about the incident and sexual assault committed by her father / appellant and also deposed that the appellant is addicted to consume alcohol and used to come home daily in drunken mood and when his first wife questioned the same, there was some misunderstanding between the appellant and his wife and she deserted him in the month of November, 2015 along with her children except PWs.2 and 3. The appellant, being the father of the minor children PWs.2 and 3, voluntarily and with an intent to exploit sexually, had committed sexual intercourse repeatedly and thereby committed offences punishable 6 r/w. 5(1) and Section 8 r/w. 7 of POCSO Act. The prosecution also established the guilt of the accused corroborating the evidence of PWs.2 and 3 / victims girls and PW10 / Doctor opined that PW2 was repeatedly forced to have sexual intercourse and PW3 was also subjected to sexual harassment and her hymen was torn. The evidence of DW1 has not supported the case of the appellant/accused.

[5] This Court has given anxious consideration to the rival submissions and also perused the entire materials available on record.

[6] Pws.2 and 3 are victims in this case. At the time of the occurrence, PW2 was aged about 16 years. The appellant / father voluntarily and with an intend to exploit her, had forceful sexual intercourse repeatedly many times. The appellant also threatened PW2 not to disclose the sexual assault and she also does not disclosed to anyone on the apprehension that no one is available to support her. PW2's sister PW3, aged 13 years at the time of occurrence, has also narrated that her father exploited her sexually and had committed sexual intercourse, due to which PW3 ran away from their house. PW2 also deposed that she has given statement under Ex.P2 before the Judicial Magistrate and her statement was also recorded in a CD - M.O.1. PW2 is residing in a Child Welfare Home. It is to be noted that PW2 was examined in Chief on 20.09.2017 and cross examined only on 30.07.2018, after a lapse of nearly 9 months. The defence has not elicited anything in favour of the appellant and in her cross examination also, she reiterated the occurrence as deposed in her chief examination.

[7] Pw3, sister of PW2, was examined in chief on 22.11.2017 and she was cross examined only on 27.06.2018, after a lapse of 7 months. PW3, in her chief examination has deposed that the appellant with an intent to commit sexual assault, made her to lie down, kiss her, pressed and licked her nipples, placed her hand on her private part and pressed forcibly. PW3 has also given statement under Ex.P3 before the Judicial Magistrate and the same was also recorded.

[8] At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in **Vinod Kumar v. State of Punjab**, 2015 3 SCC 220 wherein it has been held that

once the witness is examined in chief, the prosecution has to cross examine on the same day. The relevant portion of the said judgment is extracted hereunder:

"57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross examination and the disquieting feature is that the trial Court grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the Court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial Courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the Court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues....."

[9] In order to ascertain the age of the victim girls, namely PWs.2 and 3, the prosecution has relied upon the evidence of PW8 / Headmistress of the school deposed that she is working in a Government Middle School, Annadanampatti, Salem District and as per the admission registers Exs.P6 and P7 pertaining to PW2 and PW3 respectively, PW2 was born on 18.07.2002 and PW3 was born on 11.07.2005.

[10] The prosecution has relied upon the evidence of PW9, namely Dr.Gokularamanan, who examined the accused and issued the Medical Report Ex.P9 opining that the accused is potent and there is nothing to suggest that he is impotent and also ascertained the age of the accused/appellant as 49 years. PW10 / Doctor who examined the victim girls / PWs.2 and 3, opined that there were no external injuries, hymen is intact and the vagina admits two fingers. PW10 opined that there was sexual abuse and repeated sexual intercourse as regards PW2. Insofar as PW3 is concerned, PW10 opined that hymen was intact and sexual intercourse might have occurred. Exs.P14 & P18 are the final medical examination report given by PW10 in respect of PW2 and PW3 respectively.

[11] Though the appellant has chosen to examine his second wife as DW1, in her cross examination, DW1 has categorically admitted that due to the offence committed by the appellant, PW2 was conceived and a male child was born and died within 7 months and she also admitted that she is deposing evidence only in order to save her husband / appellant.

[12] The learned counsel appearing for the appellant would submit that PW2 was aged about 16 years at the time of the alleged occurrence and therefore, the punishment awarded / imposed by the Court below is to be in consonance with the amendment made in the Protection of Children from Sexual Offences (Amendment) Act, 2019.

[13] It is pertinent to noted that Article 21A of the Constitution of India mandates Right to Education. The State should provide free and compulsory education to all children of the age of 6 to 14 years. Also Article 51A(k) of the Indian Constitution casts a fundamental duty that requires every parent or guardian to provide educational opportunities for their child or ward between the ages of 6 and 14. The Hon'ble Apex Court in the decision in **Avinash Mehrotra v. Union of India and Others**, 2009 6 SCC 398 had observed as under:

"28. Education occupies a sacred place without our Constitution and culture. Article 21-A of the Constitution adopted in 2002, codified this Court's holding in **Unni Krishnan, J.P. v. State of A.P.**, 1993 1 SCC 645 in which we established a right to education. Parliament did not merely affirm that right; the amending Act placed the right to education within the Constitution's set of fundamental rights, the most cherished principles of our society. As the Court observed in Unni Krishnan case

"8. The immoral poet Valluvar whose Tirukkural will surpass all ages and transcend all religions said of education:

'Learning is excellence of wealth that none destroy; To man nought else affords realty of joy.'

....

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on

the child herself. Article 21-A, which reads as follows, places once obligation primarily on the State.

"21-A Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

By contrast, Article 51-A(k), which reads as follows, places burden squarely on the parents:

"51-A. Fundamental duties/- It shall be the duty of every citizen of India.-

(k) who is a parent or guardian to provide opportunities for education to his child, or, as the case may be, ward between the age of six and fourteen years."

The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society."

[14] Now coming to the case on hand, the prosecution has proved its case through the testimonies of PW2, PW8, 9 and 10. The trial Court, on a careful appreciation of oral and documentary evidence and other materials, had rightly convicted the appellant. At the time of the occurrence, as per the FIR-Ex.P19, PW3 was aged about 13 years and 9 months. PW2 has studied upto 7th standard as per Ex.P6, School Record. Similarly, PW3 has studied upto 4th standard and aged about 10 years and 9 months, as per Ex.P7, School Record of PW3. PW2 has stated that the age of 12, the appellant/father forced her to consume alcohol and also deposed that she used to consume liquor only with her parents. This Court, on an independent application of mind and careful scrutiny of the entire materials, finds no mitigating factor warranting interference with the sentence imposed by the trial Court. Hence, the life imprisonment awarded to the accused is upheld, and no reduction or modification of the sentence is warranted. The punishment imposed is commensurate with the gravity of the offence and the moral depravity it embodies.

[15] In our culture, father occupies a revered placed next to mother and higher than teacher and the divine, as expressed in the traditional saying "**Matha (mother), Pitha (father), Guru (Teacher), Deivam (God)**". A father's paramount duty is to ensure the safety, emotional wellbeing, and moral upbringing of his children. When such a sacred responsibility is let down, it strikes at the very foundation of the family and Society.

[16] Instant case is indeed a peculiar case where it is painful to note that the father, who is expected to be the protector and guardian of his children, has turned out to be the

very source of their suffering. The present case also portrays a distressing picture of how addiction to alcohol can destroy the harmony of a family and erode moral values. The accused, instead of nurturing and protecting his daughters, allowed his inebriated state to overpower his human instincts and parental duty. The evils of alcoholism not only ruin an individual's health and character but also devastate the peace and sanctity of an entire family.

[17] In the result, this Criminal Appeal is dismissed, confirming the judgment of conviction and sentence passed against the appellant/accused dated 12.02.2019 made in Special S.C.No.64 of 20165 by the Sessions Court, Magalir Neethimandram, Salem
