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

+ **CRL.REV.P. 700/2013**

% ***Judgment dated 09.12.2013***

AJAJ HUSSAIN

..... Petitioner

Through : Mr.Ajit Sharma, Adv. (DHCLSC)

versus

STATE

..... Respondent

Through : Mr.Feroz Khan Ghazi, Adv. for State.
SI Mehrab Alam, P.S. Shahdara.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

CRL.M.A.18521/2013.

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CRL.M.A.18464/2013

3. This is an application filed by the petitioner for condonation of one and a half years' delay in filing the present revision petition.
4. Notice. Counsel for the State accepts notice and has no objection if the delay in filing the present revision petition is condoned.
5. Heard. For the reasons stated in the application, the same is allowed.
Delay in filing the revision petition is condoned.
6. Application stands disposed of.

CRL.REV.P. 700/2013

7. Present revision petition is directed against the judgment dated 8.5.2013 passed by learned Additional Sessions Judge (NE), Karkardooma Courts, whereby the first appeal of the petitioner has been dismissed. By the

judgment dated 13.7.2012 and order on sentence dated 16.7.2012 passed by learned ACMM, North East, Karkardooma Court, Delhi, the petitioner was directed to undergo Rigorous Imprisonment for five years with fine of Rs.1,000/- for the offence punishable under Section 377 IPC and in case of default of payment of fine, Simple Imprisonment for six months. The petitioner was further directed to undergo RI for five years with fine of Rs.1,000/- for the offence punishable under Section 365 IPC and in case of default of payment of fine, SI for six months. Petitioner was also directed to undergo RI for three years with fine of Rs.500/- for the offence punishable under Section 342 IPC and in case of default of payment of fine, SI for three months. The petitioner has also been sentenced to RI for three years with fine of Rs.500/- for the offence punishable under Section 506 IPC and in case of default of payment of fine SI for three months. All the sentences were directed to run concurrently. The petitioner has also been directed to be given benefit of the period of imprisonment already undergone, during trial in terms of Section 428 Cr.P.C.

8. The necessary facts, as noticed by learned ACMM in the judgment dated 13.7.2012, for disposal of the present revision petition are as under:

“1. Accused Ajaj Hussian was sent up to face trial for offence u/s 363/342/377/506 IPC. Factual matrix of the matter is that on 01.02.03 upon receipt of call vide DD No.16A, SI B. Upadhyay alongwith Ct.Lav Raj went to spot at Gali No.2 Balbir Nagar near Shop “Durga Cement” where IO found many people collected there, IO also met with one Nitin Jain son of Sh.Raj Kumar Jain, aged-12 years who gave statement to the IO stating therein that he is studying in class Vth standard, he had come from his house to see “Metro Rail” to Welcome Metro Station and went on “Metro” to Shahdara Metro Station and when he was watching metro station, a boy met him whose name he came to know to be “Ajaz”. Complainant states that when he enquired from that boy the way for “Jheel”, then said boy told him that he would tell him the way to Jheel and on the pretext of taking him to Jheel, brought him to his

house in Balbir Nagar and took him in one room and closed that room. Complainant further states that said boy made him sit on a mattress on floor and at about 5;30 pm in evening, Ajaz stated to have made him to lie on the mattress and took off his pant and underwear. Complainant further alleges that said Ajaz thereafter committed unnatural carnal intercourse with him. Complainant states that by his act, he felt very pain and when he cried out of pain, then said boy stated to have threatened to kill him & and kept his hand on his mouth. Thereafter, Ajaz kept on committing unnatural act for a long time and after completing told the boy to leave the room. Complainant told about that incidence to people standing in street, while crying and told people that said boy was in room, then those people caught said boy and handed over to police.

1. On the above statement of complainant Nitin Jain present case was registered and accused Ajaj Hussain was arrested. Complainant was medically examined & accused was also medically examined. Upon completion of investigation, chargesheet was filed.
 2. Copy of charge sheet was supplied to accused free of cost and learned predecessor of this court after considering the material available on the record vide order dated 10.04.2003 framed the charge against the accused to which he has pleaded not guilty and claimed trial.
 3. In order to prove his case prosecution has examined as many as 10 witnesses.....”
9. The petitioner filed an appeal against the judgment dated 13.7.2012 and order on sentence dated 16.7.2012. In the order dated 8.5.2013, the trial court has observed that a statement was made by counsel appearing for the petitioner that the petitioner accepted his conviction without addressing any argument on merits but addressed arguments only on sentence. In my view the learned trial court has rightly appreciated the facts and the judgment rendered in the case of *State of M.P. V. Kashiram and Ors.*, reported at A.I.R. 2009 (SC) 1642 with regard to sentencing.

While discussing the principles on proportionality of sentence the Apex Court in the case of *Alister Anthony Pareira v. State of Maharashtra* reported at (2012) 2 SCC 648 has held as under:

“70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

10. Similarly in the case of *State of U.P. v. Sanjay Kumar* reported at (2012) 8 SCALE 3, the Supreme Court has further held that :

“15. Sentencing Policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the

offence and also the criminal background of the convict. Thus the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualized justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

Ultimately, it becomes the duty of the Courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed etc. The Courts should impose a punishment befitting the crime so that the Courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise...”

11. In the present case, the petitioner had kidnapped a 12 years old child and subjected him to an unnatural act. Forced sexual assault on a minor is a serious offence and is, therefore, punishable with imprisonment for life or with an imprisonment of a term, which may extend to 10 years. Both the courts below have rightly sentenced the petitioner herein to five years rigorous imprisonment. Accordingly, no grounds are made out to entertain the present revision petition and the same is dismissed.

DECEMBER 09, 2013
msr

G.S.SISTANI, J