

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrlA(S) No. 17/2025

ULFAT AHMAD MAGRAY ...Appellant/Petitioner(s)

Through: Mr. Umar Rashid Wani, Advocate with
Mr. Mubashir Bin Amin, Advocate
Mr. Mohammad Ashraf Yatoo, Advocate
Mr. Latief Ahmad Shah, Advocate

Vs.

STATE (NOW UT) THOURHG POLICE ...Respondent(s)
STATION KANGAN

Through: Mr. Waseem Gul, GA

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER
15.05.2026

CrlM No. 1710/2025

- 1.** The appellant has challenged the judgment of conviction and order of sentence dated 06.10.2025 passed by the Court of Principal Sessions Judge, Ganderbal (Special Court for POCSO Cases), whereby he was convicted for offences punishable under Sections 376 and 506 IPC and Section 4 of the POCSO Act and sentenced to undergo imprisonment for a period of ten years. Pending disposal of the appeal, the appellant has sought suspension of sentence and grant of bail primarily on the ground that the impugned judgment is based upon improper appreciation of evidence and suffers from serious legal and factual infirmities.
- 2.** It has been contended that the prosecution case originated from FIR No. 24/2020 registered at Police Station Kangan on the complaint of the father of the prosecutrix alleging that the appellant had enticed away his minor daughter and subjected her to sexual intercourse. However, during the course of investigation, the prosecutrix herself stated before the Judicial Magistrate that she was the wife of the appellant and disclosed her age to be 20 years. The appellant submits that despite such categorical statement, the prosecution proceeded on

the assumption that the prosecutrix was below 18 years of age and the learned Trial Court ultimately recorded conviction under the provisions of the POCSO Act.

- 3.** The appellant further submits that neither the complainant nor the prosecutrix supported the prosecution case during trial and that there was no evidence demonstrating forcible enticement, coercion, or deceit on his part. According to the appellant, the relationship between the parties was consensual in nature and matrimonial in character, particularly in view of the fact that the prosecutrix had been residing with him and two children were born out of the said relationship. It is argued that the learned Trial Court failed to properly appreciate these material circumstances while returning the finding of guilt.
- 4.** A principal contention raised by the appellant pertains to the age of the prosecutrix. It is urged that the prosecution failed to conclusively establish that she was a minor at the relevant point of time. The appellant points out that no reliable birth certificate was produced by the prosecution and that the ossification test merely assessed the age of the prosecutrix to be around 17 years. According to the appellant, ossification tests are not conclusive proof of age and the settled legal position recognizes a permissible margin of error in such determination. It is therefore contended that the benefit arising out of such uncertainty ought to have been extended in favour of the appellant, particularly when the prosecutrix herself claimed to be major.
- 5.** The appellant has also assailed the reliance placed by the Trial Court upon the DNA report. According to him, the DNA evidence merely establishes paternity of the child and cannot, by itself, constitute proof of an offence under the POCSO Act unless the minority of the prosecutrix is conclusively established. It is thus argued that the conviction recorded by the learned Trial Court is based upon perverse appreciation of evidence and raises substantial questions requiring consideration in appeal.
- 6.** On these grounds, coupled with the fact that the appellant has remained in custody since the date of conviction and is stated to be the sole bread earner of the family, suspension of sentence and grant of bail during pendency of the appeal has been sought.

7. According to learned counsel for the appellant, the judgment is bad in the eyes of law and, thus, reliance has been placed upon **2018 SCC Online SC 1222**, which was subsequently relied upon by the Delhi High Court in ***Court on Its Own Motion Vs. State of NCT of Delhi, Crl Ref. 02/2024***.
8. Per contra, learned counsel for the respondent argued that the prosecution had succeeded in establishing the offence against the appellant and, therefore, he does not deserve the concession of bail, as the presumption of innocence already stands dispelled. It was further contended that the findings returned by the learned Trial Court do not require any kind of interference.
9. After hearing learned counsel for both the parties and ongoing through the record of the trial court, it transpires that the victim, during her examination before the Judicial Magistrate as well as before the trial Court has stated that she had married the petitioner out of her own free will and that they were living as husband and wife. While recording her statement, she disclosed her age to be 20 years. Admittedly, there was no evidence in the form of school records regarding her date of birth and, therefore she was subjected to ossification test, wherein the report suggested that her age was 17 years.
10. The complainant, through whom the present case came to be registered and who was examined as PW-1, is the father of the victim. During the course of trial, he unequivocally admitted that his daughter had solemnized marriage with the appellant. Though he initially stated that he had not submitted any application before the police for registration of the case, he simultaneously admitted that the victim had voluntarily gone with the appellant and married him. Owing to the variance between his testimony and the prosecution case, he too was declared hostile by the prosecution.
11. The mother of the victim, while appearing as a witness, stated that the appellant had approached the family with a proposal seeking the hand of the victim in marriage and that the victim herself was willing

to marry him. However, due to disputes between the two families, the marriage could not be solemnized at that stage. She further deposed that, since the victim was determined to marry the appellant, the family ultimately had no option but to permit the marriage. She also stated that the appellant and the victim are presently living happily as husband and wife and have been blessed with two children out of the said wedlock.

- 12.** In the backdrop of the aforesaid evidence, coupled with the ossification test report wherein the age of the victim was assessed to be approximately 17 years, an important issue arises for consideration, namely, whether in cases arising under the POCSO Act, where the age of the victim is determined on the basis of an ossification test, the Trial Court is required to extend the benefit of the lower side or the upper side of the estimated age range to the accused.
- 13.** Another significant issue which arises for determination in the present case is whether the principle relating to the margin of error in age determination through ossification tests can be applied in proceedings under the POCSO Act and, if so, to what extent.
- 14.** Having regard to the fact that the present appeal was instituted in the year 2025 and that, owing to the heavy pendency of criminal appeals before this Court, its final disposal is likely to consume considerable time, coupled with the fact that the appeal itself has been preferred through the father-in-law of the appellant, who is none other than the complainant in the case, this Court cannot overlook the admitted position emerging from the evidence on record that the victim and the appellant had married each other voluntarily. The said fact stands duly established during trial. It has further come on record that from the said wedlock, the parties have been blessed with two children and are presently residing together peacefully as a family.
- 15.** Whether the findings of fact recorded by the learned Trial Court are in accordance with law is also a matter requiring detail consideration, particularly when learned counsel for the appellant has relied upon

SC 1222, wherein the convict-appellant was facing charges of kidnapping and sexual assault, and it was held as under: -

- i. In view of the above, the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.
- ii. In this regard, we have considered the evidence and materials on record. The age of the prosecutrix has been sought to be proved by the prosecution by bringing on record the school admission form (Ext. PW 5/A) and the certificate (Ext. PW 5/B) issued by one Jasdeep Kaur (PW 5), JBT Teacher of Government School Dangi Plate. PW 5 in her deposition has stated that the writings in the school admission form (Ext. PW 5/A) are in her handwriting and the signature affixed is that of the mother of the prosecutrix.
- iii. In cross-examination, PW 5 had stated that the details mentioned in Ext. PW 5/A have been obtained from the school leaving certificate issued by the Government Primary School, Tambol. The certificate issued by the Government Primary School, Tambol on the basis of which the details in the admission form (Ext. PW 5/A) was filled up by PW 5 has not been exhibited by the prosecution.
- iv. Nothing hinges on the document exhibited by the prosecution as Ext. PW 5/B as that is the consequential certificate issued on the basis of the entries in Ext. PW 5/A. The mother of the prosecutrix who had allegedly signed Ext. PW 5/A has not been examined by the prosecution.
- v. On the other hand, we have on record the evidence of Dr Neelam Gupta (PW 8), a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.
- vi. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.
- vii. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.
 - viii. We will, therefore, have to conclude that the appellant-accused deserves to be acquitted on the benefit of doubt. We, consequently, set aside the order of the High Court and the conviction' recorded as well as the sentence imposed and acquit the appellant-accused of the offences alleged. We further direct that the appellant-accused be released from custody forthwith unless his custody is required in connection with any other case.

16. The aforesaid judgment was subsequently relied upon by the Delhi High Court in *Cr Ref. no 02/2024.supra* and held that,

- i. Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in reference range be considered as age of the victim.

- ii. Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied.

17. Having regard to the aforesaid legal proposition, there can be no denial to the settled principle of law that the benefit of doubt, at all stages, other things being equal, goes in favour of the convict-accused. In that background, a case for suspension of sentence is made out, whereas perusal of the record of the Trial Court would show that the appellant had remained on bail during trial and was taken into custody only after his conviction.

18. Having regard to the mitigating circumstances of the case, particularly the fact that the victim is dependent upon the appellant and that they have two children born out of their wedlock, this court of considered view that the continued incarceration of the appellant during the pendency of the appeal would neither advance the cause of the State nor serve the interests of justice. Instead, it would operate to the serious detriment of the victim and the children. This court has taken note of the fact that the victim had consistently maintained, both during the investigation and throughout the trial, that she was more than 18 years of age. In view of these circumstances, this Court directs that the appellant be released on bail upon furnishing a surety and personal bond in the sum of Rs. 1 lakh, subject to the condition that he shall remain present before the Court on every date of hearing and shall ensure the presence of his counsel at the stage of final hearing. It's further clarified that any failure to comply with these conditions would invite coercive

measures and may result in withdrawal of the concession of bail so granted.

19. Bail bonds be furnished before the Registrar Judicial accordingly.

20. CrIM No. 1710/2025 stands *disposed of*.

21. Let the main appeal come up for final hearing on 03.07.2026.

(SANJAY PARIHAR)
JUDGE

SRINAGAR

15.05.2026

Shabroz

