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

+ **CRL.REV.P. 108/2020**

**KULDEEP SINGH**

..... Petitioner

Through: Ms Sonika Tyagi, Advocate.

versus

**STATE OF NCT OF DELHI**

..... Respondent

Through: Ms Kusum Dhalla, APP for State with  
SI Kunal Kumar, PS Bindapur.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**04.02.2020**

**CRL.M.A. 2514/2020**

1. For the reasons stated in the application, the delay in filing is condoned.
2. The application is disposed of.

**CRL.M.A. 2513/2020**

3. Allowed, subject to all just exceptions.

**CRL.REV.P. 108/2020**

4. The petitioner has filed the present petition impugning an order dated 21.09.2019 passed by the learned ASJ, whereby the learned Court had added an alternative charge for commission of an offence punishable under Section 376 of the IPC.
5. The petitioner had moved an application under Section 216 of the CrPC, *inter alia*, praying that a charge for commission of an offence under

Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) be deleted. The prosecutrix (name withheld) had alleged that the petitioner had sexual intercourse with her without her consent. The prosecutrix was stated to be a minor and, therefore, charge under Section 4 of the POCSO Act was framed.

6. The petitioner claims that the evidence brought on record establishes that the prosecutrix was an adult on the date of the incident. In view of the above, learned ASJ had framed an alternative charge under Section 376 of the IPC.

7. The learned counsel for the petitioner states that although a charge under Section 376 of the IPC may be framed but the charge under Section 4 of the POCSO Act ought to have been deleted because it is established by bone ossification test that the prosecutrix was a major at the material time.

8. This Court is not persuaded to accept the aforesaid contention. The question whether the prosecutrix is a major is a matter of trial and would be determined at an appropriate stage. Plainly, if the prosecution fails in establishing that the prosecutrix was a minor at the material time, the Court would necessarily have to consider whether commission of an offence punishable under Section 376 of the IPC is proved.

9. In view of the above, this Court finds no infirmity with the impugned order. The petition is unmerited and is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**FEBRUARY 04, 2020**  
**MK**