

**CRM-A-945-2024****1****IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH****CRM-A-945-2024****Date of Decision: 13.08.2024****State of Haryana****...Applicant****Versus****Darshan****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: - Mr. Vikas Bhardwaj, AAG Haryana****\*\*\*****Harpreet Singh Brar, J. (Oral)****CRM-25975-2024**

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 230 days in filing the application under Section 378(4) of Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 230 days in filing the aforementioned application is condoned.

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1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 14.07.2023 passed by learned Additional Sessions Judge, Fast Track Special Court, Sirsa, in the case stemming from FIR, bearing No. 188, dated 04.06.2019 under Sections 354/354-A, 451 and 509 of IPC, and Section 10 of the Protection of Children against Sexual Offences Act ('POCSO' for short) registered at Police Station Rania, District Sirsa.

2. Briefly, the facts are the complainant-victim was studying in the 7<sup>th</sup> standard at time of the alleged occurrence. On 31.05.2019 at about 12:00 PM, she was changing her clothes after coming back from school, when her neighbour, the accused-respondent, namely, Darshan Singh scaled the wall of her house, entered

her room and molested her. The victim raised an alarm and the respondent

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resultantly fled from the spot. Nobody was at home at the time of the alleged incident apart from the victim as her grand-mother had gone out to pluck tomatoes. Subsequently, she narrated the occurrence to her grand-mother, who told her to keep mum fearing loss of reputation in society. On the next day as well, the respondent also verbally abused the victim, upon which, her grand-mother called the victim's father and informed him of the entire incident. Consequently, the matter was reported to the police.

3. Having heard the learned State counsel for and after perusing the record of the case with his able assistance, it transpires that the FIR was registered on 04.06.2019 i.e. after a delay of more than 4 days. Delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay which was not done in the present case. Thus, the complaint being a result of consultations and due deliberations cannot be ruled out. Further, there are glaring lacunae in the prosecution case which completely stifle the prosecution case. As per the prosecution version, an old lady from the neighborhood reached the spot of the alleged occurrence after hearing the cries of the victim. However, neither her name was disclosed by the victim and her grandmother nor was she summoned as a witness or asked to join investigation. Curiously, even the father of the victim was not examined as a witness.

4. Furthermore, as per the testimony of the grandmother of the accused she used a stranger's mobile phone, who was standing on the street to make a call to her son's neighbour since her son also did not possess a mobile phone. However, the grandmother of the victim could not name either of these persons. When the victim was examined, she admitted to her father having a phone but she

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did not remember his number. Such inconsistencies further render the prosecution case weak. No call record of this alleged call has been brought on record by the investigation officer. There were also allegations as per the statement of the victim that the respondent hurled expletives from outside the house of the victim after the day of the alleged incident, however, no such allegations were mentioned either in the complaint or in the testimonies of both the victim and her grandmother recorded before the trial Court. As such, the prosecution failed to prove the guilt of the accused beyond the shadow of reasonable doubt.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

6. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this



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Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)  
JUDGE

13.08.2024  
Ajay Goswami

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |