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

+ **CRL.REV.P. 159/2025&CRL.M.A. 12540/2025**

NARENDER GODARA

.....Petitioner

Through: Mr. Vipul Chaudhary & Mr. Sachin
Anand, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with Ms. Mansi Sharma,
Advocate.
SI Surrendra Das, P.S. S.J Enclave.
Mr. Harshit Jain, Adv. (DHCLSC)
with Mr. Rahul Kumar & Mr.
Shubham Singh, Advs. for survivor.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

ORDER
06.05.2025

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1. This hearing has been done through hybrid mode.

CRL.REV.P. 159/2025 & CRL.M.A. 12540/2025 (Ex-parte stay)

2. The present petition under Section 442 read with Section 438 of the
Bharatiya Nagarik Suraksha Sanhita, 2023 seeks following prayers:-

“(i) Allow the present petition and set-aside the impugned order dated
29.03.2025

And/or

(ii) Pass necessary orders and directions to recall & summon PW-
2/father of victim for the purpose of further cross examination and
examination of witness at Serial No. 9 of the chargesheet respectively

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And/or

(iii) Pass any order as this Hon'ble court deems fit, just and proper in the abovementioned facts and circumstances, so as to be in the interest of the petitioner."

3. The present revision petition challenges the impugned order dated 29.03.2025 passed by the learned ASJ-01/ Special Court (POCSO) South/Saket/ New Delhi arising out of FIR No. 97/18 under Sections 341/354D/363/366/376(2)/506 of the IPC and Sections 6/12 of the POCSO Act registered at PS Safdarjung Enclave.

4. *Vide* the impugned order learned ASJ dismissed an application filed by the petitioner under Section 348 of the BNSS (Section 311 Cr.P.C.) for recalling the witness (PW-2 father of the survivor) for cross-examination and summoning the witness mentioned at Sr. No.9 of the list of witnesses (HOS, Sarvodya Co-Ed, Senior Secondary School, Safdarjung Enclave) for examination.

5. Learned Counsel appearing on behalf of the petitioner submits that the aforesaid application was dismissed by the learned ASJ *vide* the impugned order dated 29.03.2025 on the ground that that the documents from the school of the survivor which were exhibited as Ex.PX-4, Ex.PX-5, Ex. PX-6 and Ex.PX-7 were admitted by the petitioner under Section 294 of the Cr.P.C. (Section 330 of the BNSS) at the time of admission/denial of documents.

6. Learned Counsel appearing on behalf of the petitioner submits that inadvertently the previous counsel had admitted certain documents which were to be proved by the prosecution before the learned Trial Court for establishing the age of the survivor. It is pointed out that the affidavit given by the father of the survivor on the basis of which the age was determined, is

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unsigned. It is further submitted that the previous counsel had chosen not to contest the aforesaid document and the petitioner should not suffer on account of the mistake of the previous counsel.

7. Further it is submitted that PW-2 along with the witness mentioned at Sr. No.9 of the witnesses (HOS, Sarvodya Co-Ed, Senior Secondary School, Safdarjung Enclave) ought to be examined regarding the aforesaid affidavit as the present case falls under the POCSO Act and the correct age of the survivor has to be ascertained for a just and fair trial.

8. *Per contra* learned APP for the State submits that as per the record PW-2 (father of the survivor) was examined before the learned Trial Court on 17.12.2018 in the presence of the petitioner and his counsel, however the counsel for the petitioner chose not to ask any questions from PW-2 and therefore the cross-examination of the aforesaid witness was recorded as Nil.

9. Further, the petitioner had voluntarily admitted the record obtained by the IO from the school of the survivor in the presence of his counsel and once the documents were admitted as per law under Section 294 of the Cr.P.C. the witness mentioned at Sr. No.9 of the witnesses (HOS, Sarvodya Co-Ed, Senior Secondary School, Safdarjung Enclave) was dropped as the prosecution did not wish to examine the said witness due to the documents already being admitted.

10. Learned counsel appearing on behalf of the survivor appointed by Delhi High Court Legal Services Committee submits that upon instructions from the father of the survivor, he does not want to pursue this matter any more. It is pointed out that the survivor and her mother who have been examined as PW-1 and PW-3 respectively have not supported the case of the prosecution and have been declared hostile.

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11. Heard the learned counsel for the parties and perused the record.
12. The documents on which the prosecution relies upon for determining the age of the survivor are certain school leaving certificates which were based on an affidavit filed by the father of the survivor. The said documents have been admitted by the petitioner under Section 294 of the CrPC (now Section 330 of the BNSS). During the course of prosecution witness, the relevant witness for these documents mentioned at serial no. 9 in the list of witnesses were not summoned. It is further noted that the father of the survivor who appeared as PW-2 was not cross-examined on behalf of the petitioner. In view of the same, the application was preferred under Section 311 of the CrPC for recalling of PW-2, father of the survivor, as well as relevant witness from the school which was cited at serial no. 9 in the list of witnesses. Learned Trial Court had dismissed the application for recalling of the aforesaid witnesses by observing that no sufficient ground has been shown to recall the witnesses.
13. The documents which have been relied upon by the prosecution for determining the age of the survivor, are the records of the school which were maintained on the basis of the affidavit submitted by the father of the survivor, i.e. PW-2. As pointed out hereinabove, the said affidavit is unsigned. The learned Trial Court declined the application on behalf of the petitioner under Section 311 of the Cr.P.C. on the ground that the petitioner had admitted the documents under Section 294 of the Cr.P.C. which included the aforesaid unsigned affidavit.
14. Section 294 of the CrPC reads as under:-

“294. No formal proof of certain documents.—(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the



prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.”

(emphasis supplied)

15. A bare reading of the aforesaid provision would demonstrate in case where such a document is admitted then the document may be read in evidence in the trial without proof of the signatures of the person whom it purports to be signed. In the present case, the documents admitted by the petitioner, i.e., the school records, were on the basis of an affidavit which was not even signed by the father of the survivor, i.e., PW-2. This clearly seems to be an oversight on part of the prosecution as well as the defence. In terms of the proviso to Section 294 of the CrPC even the learned Trial Court could have exercised its jurisdiction. Needless to state that an unsigned document could not have been admitted otherwise. An unsigned document is *prima facie* inadmissible and cannot be read.

16. In these circumstances, therefore, this Court is of the considered opinion that it is in the interest of justice and for just decision of the case, PW-2 (father of the survivor) be recalled for cross-examination and witness mentioned at serial no. 9 of the list of witnesses filed on behalf of the prosecution may be summoned for examination.

17. In view thereof, the petition is allowed and disposed of along with pending application(s), if any.

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18. Order be communicated to the learned Trial Court for necessary information and compliance.
19. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 6, 2025/bsr/pr

Click here to check corrigendum, if any

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