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

+ CRL.A. 696/2025

KANHAIYA LAL

.....Appellant

Through: Mr. Satyam Thareja, DHCLSC, Adv.
with Mr. Deepak Kr. Arya, Adv.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Tarang Srivastav, APP for the
State with SI Sangeeta Malik, PS
Bindapur.
Ms. Astha, DHCLSC, Adv. with Ms.
Megha Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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26.09.2025

CRL.M.(BAIL) 1099/2025 SUSPENSION OF SENTENCE

1. The present application has been filed seeking the suspension of sentence during the pendency of the appeal.
2. The appellant stands convicted under Section 6 read with Section 5(1) of the POCSO Act, Section 376(2)(i) & (n) IPC and Section 506 IPC vide judgment dated 12.02.2025 and sentenced vide order dated 28.02.2025 to undergo RI for 10 years with fine. It is contended that the appellant has already undergone more than five years of the sentence.
3. The case of the prosecution, as alleged, is that the appellant, who used to visit the house of the prosecutrix for performing rituals, gave *prasad* to



the family members which rendered them unconscious and thereafter sexually assaulted the prosecutrix. Learned counsel submits that there is no medical evidence on record to corroborate these allegations, and the testimony of the parents of the prosecutrix is only hearsay. It is submitted that the family of the prosecutrix owed a sum of Rs. 1.5 lakhs to the appellant, and on account of that financial dispute, the appellant has been falsely implicated. The conviction primarily rests on the alleged recovery of a mobile phone said to contain 13 photographs of the prosecutrix. However, it is pointed out that the mobile phone was not recovered during the personal search of the appellant, and the seizure memo itself is cryptic, showing nothing was found on his person. Learned counsel stresses that the appellant has consistently denied ownership of the phone, and the manner of its recovery renders the prosecution case doubtful.

4. *Per contra*, learned APP for the State contends that the conviction of the appellant stands duly supported by cogent evidence. It is urged that the photographs of the prosecutrix were recovered from the mobile phone belonging to the appellant. Attention is drawn to the cross-examination of PW-14, where it has been specifically deposed that six nude images were retrieved from the device of the appellant. It is argued that the testimony of the prosecutrix is categorical and consistent, duly supported by the deposition of the investigating officer, the forensic expert, and the parents of the prosecutrix. Learned APP submits that the material placed on record leaves no scope for doubt and clearly establishes the guilt of the appellant beyond reasonable doubt.

5. Learned counsel for the complainant supports the case of the prosecution and submits that the deposition of the prosecutrix is clear,



unambiguous and inspires confidence. It is pointed out that the prosecutrix has consistently deposed that the appellant used to visit her house on one pretext or another, that he blackmailed her on the basis of the photographs, and that she was subjected to sexual assault by the appellant. The counsel further emphasizes that in her cross-examination as well, the prosecutrix stood firm and did not deviate from the material allegations. It is urged that the recovery of incriminating photographs from the device attributed to the appellant, coupled with the testimony of the prosecutrix and her parents, fully justifies the conviction and sentence awarded by the trial court.

6. In rejoinder, learned counsel for the appellant contends that the reliance placed on the photographs is wholly misplaced as the FSL report is not on record. It is submitted that even from the alleged six photographs, at least two are demonstrably of a period after the registration of the FIR, thereby raising serious doubts as to their authenticity and relevance.

7. Having heard learned counsel for the parties and perused the record, this Court is of the view that no ground for suspension of sentence is made out. The conviction of the appellant is primarily based on the testimony of the prosecutrix, duly corroborated by the recovery of incriminating photographs from the mobile device attributed to the appellant, and further supported by the depositions of the investigating officer, the forensic expert, and other prosecution witnesses. At this stage, while considering an application under Section 389 CrPC, this Court is not to re-appreciate the entire evidence but only to see whether the appellant has made out a prima facie case warranting suspension.

8. The submission of the appellant that the recovery of the mobile phone is doubtful cannot be accepted at this stage. A perusal of the trial record



reveals that during cross-examination, no question was put to the recovery witnesses regarding the manner in which the mobile phone was recovered. The defence confined itself to questioning PW-7 on the IMEI number of the device but did not challenge the seizure memo or the process of recovery before the trial court. Having failed to put its defence to the prosecution witnesses at the relevant stage, the appellant cannot now, at the stage of suspension of sentence, be permitted to raise a new plea that strikes at the root of the prosecution case. This Court finds that the belated challenge to the recovery is an afterthought and cannot be entertained.

9. In ***Omprakash Sahni vs. Jai Shankar Chaudhary and Anr.*** (2023) 6 SCC 123, this Court while considering the scope of 389 CrPC incases of life imprisonment held as under:

“30. In Kishori Lal v. Rupa [Kishori Lal v. Rupa, (2004) 7 SCC 638 : 2004 SCC (Cri) 2021], this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows : (SCC pp. 639-40, paras 4-6)

“4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have



weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

31. In Vijay Kumar v. Narendra [Vijay Kumar v. Narendra, (2002)9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9SCC 366 : 2003 SCC (Cri) 1197] , it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar [Vijay Kumar v. Narendra, (2002)9 SCC 364 : 2003 SCC (Cri) 1195], it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

32. The aforesaid view is reiterated by this Court in Vasant Tukaram Pawar v. State of Maharashtra [Vasant Tukaram Pawar v.State of Maharashtra, (2005) 5 SCC 281 : 2005 SCC (Cri) 1052]and Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160 :(2008) 1 SCC (Cri) 644].

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is



to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

10. Considering the seriousness of the offences under Sections 6 and 5(1) of the POCSO Act and Section 376 IPC, the sentence awarded being 10 years of rigorous imprisonment, the categorical testimony of the prosecutrix supported by recovery of photographs, and the absence of any challenge to the recovery during trial, no exceptional circumstances exist warranting suspension of sentence. The appellant having already undergone part of the sentence is not, by itself, a ground for suspension, particularly in a case of such gravity.

11. Accordingly, this Court finds no merit in the present application. The application for suspension of sentence is dismissed.

RAVINDER DUDEJA, J

SEPTEMBER 26, 2025/na