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

+ **CRL.A. 830/2025**

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.....Appellant

Through: Mr. U. Chandra Sharma &
Mr. Siddharth Kaushik,
Advs.

versus

GOVT OF NCT OF DELHI & ANRRespondents

Through: Ms. Kiran Bairwa, APP
for the State
Ms. Nandita Rao, Sr. Adv.
(Amicus Curiae) with Mr.
Amit Paswani, Adv.
SI Pinki, PS- Nihal Vihar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.08.2025

CRL.M.A. 18020/2025(application for suspension of sentence)

1. The present application is filed seeking suspension of sentence during the pendency of the present appeal.
2. The applicant was convicted by the learned Court of Sessions (hereafter "Trial Court") vide judgment dated 01.04.2025, in SC No. 629/2024 arising out of FIR No. 1050/2024, registered at Police Station Nihal Vihar, for offences under Sections 9(n), (p) and (u) read with Section 10 of the Protection Children from Sexual Offences Act, 2012 ('POCSO Act') and Section 74/75/76 of the Bharatiya Nyaya Sanhita, 2023 ('BNS'). By order on sentence dated 30.04.2025, the applicant was sentenced to undergo five years of rigorous imprisonment

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and to pay fine of ₹5,000/- for the offence under Section 10 of the POCSO Act.

3. The brief facts of the case are that on 06.09.2024, a call was received from school authorities regarding molestation of a student who was 14 years of age at the time. Pursuant to the same, the victim was counselled and medically examined. In her handwritten complaint, the victim alleged that in the month of August, 2024 when she was alone at home with the applicant, he had harassed her by forcibly removing her T-shirt and touching her shoulder.

4. In her statement under Section 183 of the Bharatiya Nagarik Suraksha Sanita, 2023 ('BNSS'), the victim stated that when she returned home from school, the applicant touched her shoulder after which she ran away. However, in her examination in chief, the victim retracted the allegation of sexual assault and stated that she mentioned few things about the applicant to her classmate/ friend who added 2-3 additional details before reporting the same to their teacher. She stated that her earlier statement was given under the influence of her classmate. She stated that when her teacher asked her whether what her classmate had told her was true, she responded in the affirmative as she was under the impression that the teacher was asking about the quarrel that took place between her and the applicant.

5. The learned Trial Court took note of the fact that the friend of the victim immediately told her teacher after she was informed about the incident by the victim. It was noted that there was no interval for manipulation of the events told to her by the victim. The learned Trial Court further took into account the testimony



of the applicant, wherein he admitted to placing his hand on the victim's shoulder, which may have resulted in the victim's shirt being pulled. The learned Trial Court was of the view that this statement is consistent with the prosecution's case. Considering aforesaid factors, the learned Trial Court was of the view that despite turning hostile, the testimony of the victim could be relied upon.

6. The learned counsel for the appellant submits that the appellant has been convicted solely on the basis of the victim's testimony which was wrought with inconsistencies. He submits that the victim had clearly deposed that she had a fight with the applicant and that she had told about the incident to a classmate, who in turn had exaggerated the matter and told the teacher.

7. He submits that the testimonies of PW-3 (classmate), PW-4 (Vice Principal), PW-5 (teacher), and PW-6 (counsellor) are based on hearsay, as they relied on PW-1's or PW-3's statements without witnessing the incident.

8. During the course of her cross-examination, the victim appears to have turned hostile and has stated that no incident of sexual assault ever took place. She has stated that the issue arose due to quarrel with the applicant, and that her friend has exaggerated and added to the incident narrated by her.

9. Considering the relationship between the parties, this Court by order dated 09.07.2025 appointed Ms. Nandita Rao, Senior Advocate as Amicus Curiae in the present case and granted her liberty to interact with the victim.

10. On 03.07.2025, the learned *Amicus* apprised this Court that the victim has been emotionally pressurized not to pursue the



complaint. She stated that sufficient interaction could not take place due to the unresponsive behavior of the victim's family.

11. In view of the same, this Court directed the Investigating Officer to take the victim to a Child Counsellor.

12. The Child psychologist's/ counselor's report has been handed over in a sealed envelope. The report indicates that two tests being— the Draw a Person ('DAP') test and the Thematic Appreciation Test ('TAT') were conducted upon the victim, whereafter the counselor was of the opinion that the victim may be under emotional stress and psychological pressure, potentially from family or other external sources.

13. Learned *Amicus Curiae* submits that she has interacted with the victim and her parents on different occasions. She submits that the victim has maintained that there was no sexual assault by her brother and that the issue had arisen after a scuffle which took place between the siblings. She submits that the victim has stated that the matter was exaggerated by her friend and that no incident of sexual assault had actually taken place. She submits that on being pointedly asked if she will feel safe when the applicant is released, the victim stated that her parents have undertaken that till she finishes school, the applicant would reside in Rajasthan with their elder brother.

14. The learned *Amicus* further submits that the definition of sexual assault under Section 7 of the POCSO Act includes the touching of vagina, penis, anus or breast with sexual intent. She submits that an analysis of the statements of the victim reveals that there is no mention of touching of any of these body parts of the victim. She submits that in the absence of any incident of



sexual assault, Section 10 of the POCSO Act cannot be applicable as the same is attracted when there is “sexual assault” by a relative who is living in the same household.

15. She suggests that the Child Welfare Committee-I (‘CWC-I’) may be directed to conduct bi-weekly visits to the victim’s school in order to meet her in an independent setting so that appropriate orders for the welfare of any “child in need and protection” may be passed if need arises.

16. The allegation against the applicant is that in the month of September, 2024, when the victim returned home, the applicant removed her T-shirt and touched her shoulder. It is seen that there are several inconsistencies in the statements given by the victim regarding the alleged incident. In her statement under Section 180 of the BNSS, she has stated that the alleged incident took place in August, 2024, when no one was at home, whereas in her statement under Section 183 of the BNSS she has stated that the alleged incident took place in the month of September, 2024 when the applicant as well as his friend was at home at the time.

17. During her examination, the victim has denied any allegation of sexual assault by the applicant and stated that she had told her friend regarding a scuffle between herself and the applicant, which has been exaggerated by her. She has stated that she used to fight with her brothers over going out and not studying, and was influenced by her friend to make false statements.

18. *Prima facie*, the statement of the victim regarding sexual assault does not inspire confidence.



19. The applicant is a young man of 23 years, and the victim is his biological sister. In these circumstances, the possibility that the allegations stem from a quarrel between the siblings cannot be entirely ruled out.

20. The Nominal Roll of the applicant indicates that he is a first-time offender and has been in custody since 19.03.2025, for almost 4.5 months. The Medical Report of the applicant reveals that he was suffering from typhoid and was tested positive for tuberculosis and is undergoing treatment through the jail authorities.

21. The appeal, however, is unlikely to be heard in the near future. Substantial period of time is likely to be taken before the present appeal is finally decided.

22. Furthermore, the parents of the applicant have undertaken before the CWC-I that the applicant shall reside in Rajasthan with his elder brother until the victim completes her schooling. In these circumstances, there appears to be no apprehension of any threat to the victim. In any event, any such apprehension can be addressed by imposing appropriate conditions.

23. As noted above, since the parties are real brother and sister, there is a possibility that the continued incarceration of the applicant may cause mental trauma and emotional distress to not only the victim but to the entire family.

24. It is equally true that the appellant subjecting the victim to harassment on being released cannot be ruled out. For the said purpose, this Court agrees with the suggestion of the learned *Amicus* and directs the CWC-I to conduct weekly interactions with the victim, in an independent setting and take appropriate



steps that may be required, in accordance with law.

25. In view of the above, the order on sentence dated 30.04.2025 is suspended till the disposal of the present appeal. The applicant is directed to be released on furnishing a personal bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the Duty MM/ Link MM, on the following conditions:

- a. The applicant shall provide his address where he would be residing and shall not change the address without informing the concerned IO/ SHO;
- b. The applicant shall, under no circumstance, leave the country without the permission of the learned Trial Court;
- c. The applicant shall, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- d. The applicant shall, appear before this Court, as and when directed.
- e. The applicant shall reside in Rajasthan with his elder brother until the victim completes her schooling, as undertaken by his parents before the CWC-I;
- f. The applicant shall not contact the victim in any manner whatsoever.

26. This Court also appreciates the effort put in by the learned *Amicus* Ms. Nandita Rao, Senior Advocate in assisting the Court.

27. The present application is allowed in the aforesaid terms.

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28. The matter requires consideration.



29. The appeal is admitted.

30. List in due course.

AMIT MAHAJAN, J

AUGUST 7, 2025