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

+ CRL.A. 450/2017 & CRL.M.(BAIL) 519/2022, CRL.M.A.
33120/2024
SHIVA

.....Appellant

Through: Mr. Hemant Singh, Advocate.

versus

STATE

.....Respondent

Through: Mr. Amit Ahlawat, APP.
SI Sanchit, PS: Adarsh Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **15.05.2025**

1. The present appeal under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973¹ is directed against judgment of conviction dated 07th December, 2016 and the order on sentence dated 14th December, 2016 passed by the Additional Sessions Judge, North District, Rohini Court, New Delhi, in S.C. No. 57959/16 arising out of FIR No. 142/2013, for offences under Section 376 of the Indian Penal Code, 1860² and Section 4 of the Protection of Children from Sexual Offences Act, 2012³, registered at P.S. Adarsh Nagar, whereby the Appellant has been directed to undergo rigorous imprisonment for a period of 15 years and a fine of INR 5,000/-. In default of payment of fine, the Appellant was directed to undergo simple imprisonment for a further period of 30 days.

¹ "CrPC"

² "IPC"

³ "POCSO"



2. The Appellant was put to trial in respect of the aforementioned FIR, for an incident involving allegations of kidnapping and sexually assaulting prosecutrix “R” who was about two and a half years at the time of incident. The FIR in question was registered on the statement of prosecutrix’s mother, who alleged that on the date of incident, i.e., on 11th May, 2013, she was sleeping in her room with both her daughters in the afternoon. At about 05:00 PM, when she woke up, she did not find the victim there. She continued to search for the victim when suddenly, she heard a cry. Hearing that, she went to the roof and found the Appellant lying with the victim in naked condition and sexually assaulting her. After she raised alarm, the Appellant wore his clothes, pushed the Complainant aside and ran away. Thereafter, the Complainant noticed that victim was bleeding from her private parts. When the Complainant’s husband returned at night, she narrated the entire incident to him. Next morning, when the Complainant’s brother was informed about the incident, he stormed the room of the Appellant along with Complainant’s husband. At the time, the Appellant was packing his bag but when the two barged in his room, he got frightened, but before he could flee, he was locked inside. The matter was then reported to the Police, who took the victim for her medical examination in BJRM Hospital, Jahangir Puri. The Police then recorded her statement, and the present case FIR got registered and investigation was initiated.

3. During the course of investigation, the victim was medically examined in BJRM Hospital vide MLC No. 59242 dated 12th May, 2013, in which the doctor endorsed “*A/H/O Physical and sexual Assault, Hymen ruptured and impression sexual assault recent*”. The exhibits provided by the doctor after medical examination were seized and sent to FSL Rohini,



Delhi for examination and report. Further, statement of the Complainant under Section 164 CrPC was recorded before the Metropolitan Magistrate, Rohini Court, Delhi. After completion of the investigation, charge sheet against the Appellant was framed under Section 376 of the IPC and Section 3 of POCSO.

4. On 7th December, 2013, the Trial Court framed charge for the offence punishable under Section 6 of POCSO. The Appellant pleaded not guilty and claimed trial. Prosecution examined 23 witnesses, and testimony of material witnesses was found to be corroborating the case of prosecution. Additionally, although there was absence of semen on exhibits, the observations on MLC of prosecutrix and the FSL report still indicate signs of sexual assault, further corroborating the version of prosecution witnesses that prosecutrix was sexually assaulted.

5. Based on the totality of evidence, including the statements of the Prosecutrix and the Complainant, the Trial Court concluded that prosecution had established, beyond reasonable doubt, that the Appellant had committed the alleged offence. Accordingly, the Trial Court convicted the Appellant for the offence punishable under Section 6 of POCSO and awarded a rigorous imprisonment of 15 years and a fine of INR 5,000/-. In default of payment of fine, it was directed that the Appellant would further undergo imprisonment for a period of 30 days.

6. Counsel for the Appellant submits that the incident in question occurred in 2013, and the Appellant has already undergone the rigours of a full criminal trial over an extended period. He draws attention of this Court to the interaction sheet, recording the conversation between the Counsel and the Convict, wherein the Appellant is seen stating that he does not want to



challenge the judgment of conviction and requests the period of sentence be reduced to the period undergone.

7. Importantly, it is also noted that the Court *vide* order dated 06th August, 2024, had already suspended his sentence and directed Appellant to be released on bail. However, the Appellant could not take benefit of said order as he was unable to furnish any surety. Moreover, he was also not able to give any address where he could be residing. Therefore, the Appellant has also been serving the remaining portion of his sentence, despite grant of suspension of his sentence. In light of these personal and familial circumstances, Counsel prays that the sentence imposed may be reduced to the period already undergone by the Appellant.

8. At this juncture, Mr. Amit Ahlawat, APP, points out that as per order on sentence, the Appellant was directed to pay a fine of INR 5,000/-. In case it stands unpaid at the time of release, the Appellant would be liable to undergo simple imprisonment for a period of 30 days.

9. The Court has considered the submissions made by the Appellant's Counsel. As has been brought to the notice of this Court, the Appellant is an orphan boy, who had been brought up in a temple at Darbhanga, Bihar and thereafter, at the age of 10 years, he came to Delhi for work and livelihood. At the time of registration of the present case FIR, and for four years before that, the Appellant was working as a labourer in a factory at Wazirpur, Delhi. He has no family or friends and as a result he is unable to furnish a bail bond. He also has no place to stay and therefore, despite securing an order from the Court on 6th August, 2024, he is continuing to be in custody.

10. As per Nominal Roll, as on 20th February, 2025, the Appellant has undergone sentence of 11 years, 9 months and 8 days and has also earned



remission of 2 years, 1 month and 16 days. Thus, the Appellant has been in custody for nearly 12 years. Considering the period of remission, as on date, his total unexpired portion of sentence is near about 10 months 24 days. From the Nominal Roll, it is evident that his jail conduct is also satisfactory. It is further noted that the Appellant has not been involved in any subsequent offence since the registration of the present FIR.

11. Having regard to the total period of custody already undergone, the remission earned, the socio-economic position of the Appellant and the fact that the Appellant has been serving the remaining portion of sentence despite there being an order for suspension of his sentence, the Court is of the view that the ends of justice would be met by reducing the sentence period. Accordingly, the sentence imposed upon the Appellant is modified to the period already undergone. However, the fine imposed by the Trial Court shall be paid, if not already deposited, within four weeks from today.

12. The Court does not overlook the gravity of the offence for which the Petitioner stands convicted. This reduction in sentence is not an erasure of past conduct, but a recognition of future possibility.

13. The present petition is disposed of in the above terms, along with pending application.

14. Copy of the order be sent to the concerned Trial Court and to the Superintendent of the concerned jail for information and compliance.

SANJEEV NARULA, J

MAY 15, 2025

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