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

+ **CRL.A. 897/2018 & CRL.M.(BAIL) 1795/2024**

SANJAY KUMAR YADAV

.....Appellant

Through: **Ms. Saahila Lamba, Advocate**

versus

STATE

.....Respondent

Through: **Mr. Mukesh Kumar, APP for the State with ASI Sunita, PS Alipur, Delhi**

Ms. Inderjeet Sidhu, Advocate (DHCLSC) with Ms. Nazreena Sheikh, Advocates for Prosecutrix

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 20.05.2025

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973¹ is directed against judgment of conviction dated 4th June, 2018 and the order on sentence dated 6th June, 2018 passed by the ASJ-01/ Special Judge, POCSO Act (North), Rohini Courts, New Delhi, in S.C. No. 58981/16 arising out of FIR No. 242/2016, for the offences under Section 363/376(2)(i) of the Indian Penal Code, 1860² and Section 6 of the Protection of Children from Sexual Offences Act, 2012³, registered at P.S. Alipur, whereby the Appellant has been directed to undergo rigorous imprisonment for a period of 14 years for the offence under Section 376(2)(i) of the IPC, and a fine of INR 15,000/-, in default of payment of which, he was directed to undergo simple imprisonment for a further period



of 60 days. The Appellant was further directed to undergo rigorous imprisonment for a period of 3 years for the offence under Section 363 of the IPC, and a fine of INR 5,000/-, in default of payment of which, he was directed to undergo simple imprisonment for a further period of 15 days. Both these sentences were directed to run concurrently.

2. The factual background leading to the filing of the present appeal in that on 24th March, 2016, victim 'C', aged about 6 years, was playing in the gali, when the Appellant, took her to his room, bolted the door from inside, and took off his clothes as well as those of the victim. Thereafter, he committed oral sexual assault on her. The victim started shouting, subsequent to which her mother reached there and rescued her. This led to the registration of the impugned FIR.

3. During the course of investigation, the victim was medically examined at SRHC Hospital *vide* MLC No. 1184/2016, however her mother refused to get her internal medical examination conducted. Thereafter, the Appellant was arrested. The victim's statement was recorded under Section 164 Cr.P.C. before the concerned magistrate on 25th May, 2016, and the proof of her age was obtained. Subsequently, the chargesheet was filed before the concerned court. The Appellant was charged for the offences under Sections 363/376 IPC and Section 6 of the POCSO Act.

4. Thereafter, the statement of the Appellant was recorded under Section 313 Cr.P.C. The Prosecution examined 11 witnesses to establish their case, while the Appellant opted not to lead any defence evidence.

5. Based on the totality of evidence, including the statements of the victim and the witnesses, 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 offences punishable under Section 363/376(2)(i) of the IPC and Section 6 of POCSO. The Appellant was awarded rigorous imprisonment for a period of 14 years for the offence under Section 376(2)(i) of the IPC, and a fine of INR 15,000/-, in default of payment of which, he was directed to undergo simple imprisonment for a further period of 60 days. He was further directed to undergo rigorous imprisonment for a period of 3 years for the offence under Section 363 of the IPC, and a fine of INR 5,000/-, in default of payment of which, he was directed to undergo simple imprisonment for a further period of 15 days. Both these sentences were directed to run concurrently. Out of the said fine to be realised from the convict, INR 10,000/- was directed to be given to the victim, through her mother, by way of compensation. However, it was clarified that such amount would not be released to the victim till the statutory period available to the convict to file the appeal lapses and in the eventuality of the appeal being preferred as per the order of the appellate court.

6. Counsel for the Appellant states that she has conferred with the Appellant and has received instructions that the Appellant does not wish to pursue the challenge against the judgement of conviction. Rather, he seeks to limit the appeal to seeking reduction of sentence to the period already undergone. She submits that the incident in question occurred in 2016, and the Appellant has already undergone the rigours of a full criminal trial over an extended period. She further submits that the Applicant has already undergone more than 10 years of custody including the period of remission. Accordingly, she prays that the Appellant's sentence be reduced to the period already undergone.



7. The Court has duly considered the submissions made by counsel for the Appellant. It has been brought to the Court's attention that the Appellant, a young man of 24 years at the time of the alleged incident, comes from an economically disadvantaged background. Prior to his arrest, he was employed as a labourer, earning a modest monthly income of INR 10,000/- to INR 12,000/-. Despite his limited means, the Appellant regularly sent financial support to his elderly parents, who are entirely dependent on him and struggle to meet their basic needs. In addition, the Appellant has a wife and a minor son, both of whom also rely on him for their sustenance. It has further been submitted that the Appellant has no prior criminal record, and that a reduction in his sentence would afford him the opportunity to reintegrate into society and live the remainder of his life as a law-abiding citizen, supporting his family.

8. It is pertinent to note that the minimum punishment for the offence under Section 376(2)(i) of the IPC is ten years of rigorous imprisonment. As per the latest Nominal Roll, as on 7th April, 2025, the Appellant has undergone sentence of 9 years and 21 days and has also earned remission of 1 year, 8 months and 15 days. Thus, the Appellant has been in custody for nearly 11 years, and his total unexpired portion of sentence is around 3 years, 2 months and 24 days. Furthermore, it is evident from the Nominal Roll that the Appellant's jail conduct is also satisfactory.

9. While this Court acknowledges the serious nature of the charges against the Appellant, involving offences under various sections of the IPC and POCSO, it must be noted that in ***Rajasekar v. State Rep. by the***



Inspector of Police,¹ the Supreme Court, in similar circumstances, reduced the sentence of the accused to the period already undergone, for the offence under Section 4 of the POCSO Act. This decision was based on the fact that the accused had already served the minimum sentence prescribed for the offence, taking into account the mitigating factors favouring the accused.

10. In light of the aforesaid, and having regard to the total period of custody already undergone, the remission earned and the socio-economic position of the Appellant, the Court is of the view that the ends of justice would be met if the period of sentence is reduced to the period already undergone by the Appellant. Accordingly, the present appeal is allowed in part, with the following directions:

- (i) The conviction of the Appellant under Section 363/376(2)(i) of the IPC and Section 6 of POCSO is confirmed;
- (ii) The sentence imposed by the Trial Court is modified to the period already undergone by the Appellant;
- (iii) While the fine imposed by the Trial Court is not being set aside, the default sentence for non-payment of the fine is reduced to 7 days for the offence under Section 376(2)(i) of the IPC, and 7 days for the offence under Section 363 of the IPC.

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

12. The present appeal is disposed of in the above terms, along with pending application.

13. Copy of the order be sent to the concerned Trial Court and to the

¹ SLP (Cr.) No. 5104/2022.



Superintendent of the concerned jail for information and compliance.

SANJEEV NARULA, J

MAY 20, 2025

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