



2026:DHC:164



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on :10.10.2025

Judgment pronounced on : 09.01.2026

+ **CRL.A. 442/2025 & CRL.M.(BAIL) 768/2025**

AKHTAR HUSSAIN

..... Appellant

versus

STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Devanand Prasad, Advocate.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State
with ASI Amrita, PS Sagarpur.

Mr. Asheesh Jain, Senior Advocate (Amicus
Curiae) with Mr. Adarsh Kumar Gupta, Mr.
Vishal Gupta and Ms. Neha Yadav,
Advocates.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed against the judgment dated 11.07.2024 (hereafter '**impugned judgment**') and order on sentence dated 13.02.2025 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('**ASJ**'), South East District,

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Signing Date: 09.01.2026
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Saket Courts, Delhi in SC No. 180/2015 and 1909/2016 arising out of FIR No. 737/2015 (**'FIR'**).

2. By the impugned judgment, the learned ASJ convicted the appellant for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (**'POCSO Act'**). By the impugned order on sentence, the learned ASJ sentenced the appellant to undergo rigorous imprisonment for a period of 25 years and to pay a fine of ₹25,000/- for the offence under Section 4 of the POCSO Act.

3. Briefly stated, DD No. 5A dated 23.09.2015 was recorded at Police Station Jaitpur at about 12:15 AM pertaining to the rape of an eight-year-old girl who was also stated to be bleeding. After the receipt of the information, PCR reached the spot and took the victim to AIIMS Hospital in CATS Ambulance. The victim was thereafter examined wherein she reported the commission of sexual assault by the appellant. The doctor thereafter examined the victim and also collected the biological samples for the purpose of FSL examination.

4. In the 'sexual history' column of the MLC, the victim's account of the alleged incident was noted as : the victim was lured into buying clothes and was taken to a secluded place whereafter she was gagged and the appellant also forcefully inserted his private part into the victim's genitals 3-4 times as a consequence of which the victim started bleeding.



5. After the completion of investigation, chargesheet was filed on 04.12.2015 for the offences under Sections 376/506 of the IPC and Section 4 of the POCSO Act. Charges were framed for offences under Section 363/506 of the IPC and Section 4 of the POCSO Act.

6. The learned ASJ, by the impugned judgment, convicted the appellant for the offence under Section 4 of the POCSO Act. In relation to the age of the victim, the learned ASJ noted that the DD Entry recorded the age of the victim as 10-11 years. Since no document pertaining to the age of the victim was available, the ossification test of the victim was conducted. As per the ossification test, the age of the victim was opined to be between 14-16 years. Since the ossification test report had not been disputed by the accused, it was held that the age of the victim was below 18 years of age as on the date of the commission of the alleged offence.

7. In respect of the offence under Section 363 of the IPC, it was noted that the appellant had taken the victim on the pretext of buying clothes for the Eid festival. It was noted that the prosecution did not lead any evidence to show that the victim was removed from the custody of her lawful guardian without their consent. It was consequently noted that the ingredients to establish the commission of offence under Section 363 of the IPC were not made out.

8. Insofar as the offence under Section 506 of the IPC is concerned, the learned ASJ noted that the victim in her statement under Section 164 of the CrPC had stated that the appellant after the



commission of the alleged offence had threatened her against disclosing about the said incident to anyone. It was noted that no evidence to show that the appellant had threatened the victim as alleged had been led by the prosecution. Consequently, it was noted that the offence under Section 506 of the IPC was not made out.

9. In regard to the offence under Section 4 of the POCSO Act, it was noted that the victim, in her evidence, had stated that she had gone with the accused on his bike and had fallen from the bike at around 5:00 PM post which both the accused and the victim returned home. The victim deposed that her mother arrived at 11:00 PM and called the police as she saw that the victim was bleeding. The deposition of the sister of the victim was also considered as per which, she stated that when she returned home from work at 8:00 PM, the victim was not present at home, and that the victim returned with the accused around 11:00 PM. The testimony of the mother of the victim was also considered as per which she deposed that she returned from work around 10:30 PM and subsequently learnt that the appellant and victim were not present and that the appellant had taken the victim with him at around 06:00 PM.

10. It was noted that all the material witnesses being the victim, her mother, and her sister materially contradicted each other and deposed falsely in order to save the appellant. It was noted that the victim in her testimony admitted that the appellant used to regularly visit the house of the victim along with his wife/one of the victim's elder sister



after the alleged incident. The learned ASJ noted that it was possible that the appellant and his wife influenced the victim from not disclosing the correct and complete facts.

11. It was noted that the appellant being '*jija*' of the victim was related to all the witnesses – the victim, her mother and her sister. It was noted that the appellant was consequently in a position to influence the witnesses. It was also noted that the other incriminating material on the record also pointed to the guilt of the accused. It was noted that the matter was immediately reported to the police after the occurrence and the victim was also immediately taken to the hospital by a PCR though CATS Ambulance in a bleeding condition. It was noted that while the victim, in her deposition, stated that a nail had penetrated her body as a consequence of which she suffered the bleeding, however from the MLC, it was evident that no injury caused by penetration of nail was observed by the doctor.

12. The learned ASJ noted that the MLC revealed that the victim bled from her vagina and that there was a tear on the fourchette. It was noted that even if it were presumed that the victim fell from the motorcycle, even then it seemed implausible that the nail penetrated the victim's private part without passing through her clothes. It was noted that undisputedly the appellant had taken the victim to the market on the pretext of buying clothes for her on the alleged date of incident. It was noted that as per the testimony of the mother and sister of the victim, the appellant and the victim returned home together. It



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was noted that undisputedly, the victim was also bleeding from her private part when she returned home with the appellant.

13. The learned ASJ further noted that the incident occurred between 10:00 PM – 11:00 PM on 22.09.2015 and the information was received at the Police Station immediately after the occurrence. It was noted that the victim reached home in a bleeding condition and another *jija* of the victim called on 100 number and the PCR reached the spot. The victim was also immediately taken to the hospital and her medical examination was conducted where the hymen of the victim was found to be torn. It was noted that the victim also suffered a tear on her fourchette measuring 1 cm and also had blood stain on vulva and her inner thigh. It was noted that the FSL examination of the specimens collected from the victim as well as the appellant revealed that the alleles from the blood in gauze of appellant and the blood sample of victim were accounted in the mix alleles of the vulval swap of victim. It was noted that the accused did not lead any evidence to disprove the DNA result. It was noted that the victim was examined immediately after the incident and the exhibits examined at FSL were also immediately collected. It was noted that the chain of custody of the exhibit of the victim and the appellant from the point of collection till their forensic examination was unbroken. It was noted that the accused had not given any explanation as to how his DNA was found on the internal body parts of the victim.



14. The learned ASJ further noted that as per the defense of the appellant, the victim and the appellant were travelling on the motorcycle together, however, no evidence of any injury being suffered by the appellant was present. It was noted that there existed no evidence to show that the motorcycle was damaged in any accident. It was further noted that the victim also had only suffered injury on her private part and nowhere else on the body. It was noted that that there was not even one abrasion on her body barring the injury on her vagina, fourchette, hymen rupture and consequential bleeding. It was noted that if the victim had indeed fallen from the motorcycle as alleged, she would also have suffered bruises on her hands, face and outer part of the leg which is absent in the present case. Consequently, based on the aforesaid, the learned ASJ convicted the appellant for the offence under Section 4 of the POCSO Act.

15. The learned counsel for the appellant submitted that the impugned judgment is erroneous and is liable to be set aside. He submitted that the victim and her mother and elder sister categorically denied that the appellant had committed any sexual assault on the victim and had categorically deposed that the bleeding was on account of injury by a nail. He submitted that the prosecution failed to examine a crucial witness Abdul Motim who called the police regarding the alleged crime which also was a result of personal enmity with the appellant.



16. He submitted that the statement of the prosecution witnesses strongly opposed the alleged crime and the victim categorically stated that the alleged incident occurred as a consequence of the injury suffered by the victim.

17. This Court, by order dated 20.05.2025, considering that the victim did not support the case of the prosecution and noting that the appellant is the brother-in-law of the victim and the scientific evidence in the form of FSL showed that the appellant had established physical relations with the victim had appointed Mr. Asheesh Jain, Senior Advocate as *amicus curiae* in the present matter.

18. The learned *amicus curiae* submitted that while the victim and her family members had turned hostile and did not support the case of the prosecution, the scientific evidence in the present case is sufficient to sustain the conviction of the appellant. He submitted that the appellant also failed to rebut the presumptions under the POCSO Act.

19. He submitted that the appellant did not tender any explanation in relation to the fact as to how the DNA of the appellant was found in the vulval swabs obtained from the victim. He submitted that once the foundational facts stood established, the burden was on the appellant to rebut the presumptions raised against him.

Analysis

20. Before resorting to deal with the contention of the parties as well as analysing the evidence presented, it is pertinent to take note of



the scope of Appellate Jurisdiction that is vested in this Court. While dealing with an appeal against judgment on conviction and sentence, this Court is required to reappraise the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh : Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in Majjal v State of Haryana [(2013) 6 SCC 799] , where the Court held:

‘6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment





unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.'"

(emphasis supplied)

21. The inception of this case stems from DD No. 5A dated 23.09.2015 recorded at Police Station Jaitpur at about 12:15 AM pertaining to rape of an eight-year-old girl who was also stated to be bleeding. Upon receiving the information, the victim was taken to AIIMS Hospital in CATS Ambulance. The medical examination of the victim was thereafter conducted at 2:15AM on 23.09.2015. The column '*sexual assault history*' in the MLC records that the victim was allegedly lured to buy new clothes and was taken to a secluded place where she was gagged and undressed. The same also records that the appellant allegedly kissed and inappropriately touched the victim and also forced his private part into the victim's genitalia 3-4 times on account of which the victim started bleeding.

22. Thereafter, the statement of the victim was recorded wherein she stated that she was around 10-11 years old and alleged that the



appellant, who is her *jija*, on 22.09.2015 at around 7 PM on the pretext of buying clothes for her, took her to the market on his motorcycle. She alleged that thereafter the appellant took her to a secluded place, threatened her and thereafter removed her lowers and forcefully did wrong acts with her. She further alleged that on account of the same, the victim experienced pain and also started bleeding from her genitalia. It is alleged that thereafter, the victim was dropped to her home at around 11PM whereafter the victim disclosed about the said incident to her mother and a call was made to the police by her elder brother-in-law Motim.

23. In support of its case, the prosecution examined 09 witnesses which include, the victim (PW1), her mother (PW3), her sister (PW4), Assistant Director (Biology), FSL, Rohini, Delhi (PW8) and some police officers who deposed in relation to the manner of the investigation (PW2, PW5, PW6, PW7 and PW9).

24. Having noted so, it is pertinent to note that the present case is one where the victim and her family members turned hostile and have not supported the case of the prosecution. The appellant is the *jija* of the victim. In their statements under Section 161 of the CrPC, the victim, her sister and her mother stated that the appellant had raped the victim. Subsequently, in her statement under Section 164 of the CrPC recorded on 24.09.2015, the victim maintained that the appellant took her to a market on the pretext of buying clothes and that on their way back, the appellant had taken the victim to a secluded area and had



thereafter raped her despite protest. Generally, in a criminal trial, the Court is tasked with assessing rival contentions and defences premised on contradictions in the case of the prosecution. However, unlike the usual scenario, the present case, as noted above is one where the victim as well as her family members during their examination-in-chief resiled from their earlier narrative thereby withdrawing their support from the case of the prosecution. The prosecution was thus left to establish the commission of alleged offence barring the support of the material witnesses. The conviction of the appellant, in the present case then, was essentially sustained considering the surrounding circumstances and on the basis of scientific evidence despite the victim turning hostile.

25. Recently, this Court was confronted with a similar scenario in the case of ***Jahid v. State Govt of NCT of Delhi : 2025:DHC:11807*** where the allegations were made against the step father of the victim and the victim and her family members had subsequently turned hostile in their evidence before the Court. This Court had sustained the conviction of the appellant therein considering the unbreached chain of custody of FSL coupled with the initial statements of the victim and her family members. While doing so, this Court had also specifically considered the impact of statutory presumptions under Section 29 and 30 of the POCSO Act and also considered the Parliamentary Standing Committee on Human Resource Development - 240th Report on the Protection of Children from Sexual Offences Bill, 2011 and its



staunch emphasis on the aspect of vulnerability of victims when the perpetrator happened to be a family member.

26. In that regard, upon a rigorous assessment of the facts of the present case as well as the evidence presented, this Court is of the view that the subsequent somersault of the victim as well as her family members do not dent the case of the prosecution.

27. Insofar as the aspect of the age of the victim is concerned, it is pertinent to note that conflicting versions in relation to the age of the victim were given. DD No. 5A records the age of the victim as 8 years. In the complaint, the victim stated her age to be around 10-11 years. Subsequently, in her statement under Section 164 of the CrPC, the victim stated that she was 10 years old. Considering the dearth of any documentary proof to manifest the age of the victim, the ossification test of the victim was conducted as per which the victim was opined to be between 14-16 years of age. The foundational fact pertaining to the minority of the victim at the time of the commission of the alleged offence consequently stood established.

28. Resorting now to the facts of the present case, it is pertinent to note that in the first account of the incident narrated by the victim at the time of her medical examination conducted on 23.09.2015 at about 2:15 AM, the victim named the appellant to be the perpetrator. The MLC report under the column 'sexual assault history' in the victim's own words records the incident as : *"abc was lured into buying new clothes and was taken to a secluded place near Alegaon in a jungle*



park; was gagged a cloth and was undressed. He kissed her, touched her breasts and forced his penis into her vagina 3-4 times during which she started bleeding. He then paid her some money and threatened her to keep quiet.”

29. Thereafter, in her complaint that led to the registration of the FIR as well, the victim named the appellant to be the perpetrator and alleged that the appellant took the petitioner to a secluded place where he committed wrong acts with her. She alleged that the appellant threatened her and alleged that on account of the said acts, the victim experienced pain and also bled from her genitalia.

30. The victim's sister, in her statement under Section 161 of the CrPC, stated that on 22.09.2015, the appellant, at around 7 PM, on the pretext of buying clothes for the victim, took her to *Bhogal* market and thereafter returned at around 11 PM. She stated the victim appeared sick and there were blood stains on her clothes. She stated that upon asking, the victim told her that the appellant had raped the victim.

31. The victim's mother, in her statement under Section 164 of the CrPC, stated that on 22.09.2015 at around 7PM, the appellant took the victim to a market to buy clothes for her for Eid. She stated that the victim returned with the appellant at around 11 PM on a motorcycle and the appellant was drunk at that time. She stated that she too saw blood stains on the clothes of the victim, and that upon enquiry, the victim stated that the appellant had raped her.



32. Pertinently, in her statement under Section 164 of the CrPC recorded on 24.09.2015, the victim stated that the appellant took her on his motorcycle to market on the pretext of buying clothes for her. She stated that thereafter the appellant deviated from the normal path and used a secluded route and stopped at a store where he bought some *gutka*, water and curd. She stated that thereafter the appellant told her “*mai khelunga tere se aur bola ki woh gande kaam karega.*” She stated that thereafter, the appellant took her to a jungle and thereafter asked her to kiss him to which the victim replied : “*maine bola ki mai kiss nahi dung; meri Zindagi barbad ho jayegi.*” She further stated that : “*usne kaha mai baad mein shaadi kar lunga. Usne bola ki kapde khol. Maine mana kiya toh usne zabardasti kapde khole.*” She stated that thereafter the appellant forcefully removed the victim’s clothes and thereafter removed his clothes and raped her. She stated that during such time, the appellant had also gagged the victim. She stated that the appellant also wrapped the victim’s dupatta around her neck and threatened to kill her. She stated that thereafter the appellant asked her to wear clothes and also gave ₹100/- to her and asked her to not disclose about the same to her mother.

33. The abrupt *volte-face* of the witnesses in their evidence before the Court warrants a graver degree of circumspection on the part of the Court. Evidently, in the immediate aftermath of the incident, which allegedly took place on 22.09.2015, the victim as well as her family members supported the case of the prosecution. However, it is only after the passing of a substantial amount of time when the victim’s



statement was recorded in July 2017, and the evidence of the sister and mother of the victim were recorded in February, 2018 and September 2018 that the witnesses deposed in the favour of the appellant.

34. The victim (PW1), in her evidence, deposed that the appellant two years ago, took her to a market to buy clothes at *Bhogal* market on motorcycle. She stated that the appellant was driving the motorcycle very fast on account of which both of them had fallen from the motorcycle at around 5 PM. She deposed that a nail had penetrated her body as a consequence of which she suffered the bleeding. She stated that thereafter she went to her house and her mother came at around 11PM. She stated that a call was made to the police because her mother thought that the appellant had raped her. On being cross examined by the learned counsel for the accused, the victim stated that the appellant had not committed any wrong act with her.

35. The sister of the victim (PW3) on the other hand, in her evidence, deposed that on the day of the incident, she returned home from her duty at around 8 PM, however, at that time, the victim was not present and that their mother was also on duty. She stated that thereafter at around 11PM, the appellant came back along with the victim. She further stated that she noticed blood oozing from the victim's thigh. She thereafter somersaulted from her earlier version and stated that when she asked the victim about the blood, she was informed that the victim met with an accident on the way home.



Similarly, the mother of the victim (PW4) deposed that on the said date, she had gone for work and had left her children including the victim and appellant (who used to stay near the victim's house) at home. She stated that when she returned from work at around 10:30PM, her children told her that the appellant had taken her with him for buying clothes. PW4 further deposed that thereafter the victim alongwith the appellant returned home at around 11 PM and there was blood on the clothes of the victim. She thereafter stated that upon asking, the victim stated that the appellant had consumed liquor and that they had fallen from the motorcycle due to which she had suffered injuries.

36. While the material witnesses have failed to label the appellant as the perpetrator, who is stated to be the victim's *jija* and wife to one of the daughter's of the victim's mother (PW4), it is pertinent to note that the medical as well as the scientific record in the present case points to the contrary.

37. It is pertinent to note that the incident allegedly occurred in the evening of 22.09.2015. The DD NO. 5A was recorded at around 12:15 AM on 23.09.2015. The medical examination of the victim was also conducted on 23.09.2015 at around 2:15 AM as per which hymen of the victim was found to be torn on *fourchette* 1 cm. The MLC report indicates that there were blood stains on the vulva as well as the inner thigh of the victim. The MLC report further indicates that the victim had not changed her clothes or washed them and the same were also



seized. The *malkhana* register indicates that the seized medical exhibits of the victim were deposited in the *malkhana* on 23.09.2015. Thereafter, the medical examination of the appellant was conducted on 24.09.2015 and the *malkhana* register indicates that the exhibits of the appellant were deposited in the *malkhana* on 24.09.2015. Since the appellant admitted the entries made in the register in Section 294 of the CrPC, HC Harender Kumar MHC(M) – *malkhana incharge* was dropped from the list of the witnesses.

38. PW-9, in her evidence, stated that the seized exhibits were deposited by her to CFSL on 30.11.2015. PW8/FSL expert deposed that the seal samples were intact and tallied with. Further, the FSL report indicated that the “*alleles from the source exhibit ‘A’ (i.e. blood in gauze of accused) and ‘15’ (i.e., blood sample of victim) were accounted in the mix alleles from the source of exhibit ‘1’ (i.e., vulval swap of victim), ‘2a’, ‘2b’ (i.e., vaginal smear of victim), ‘3’ (i.e., vaginal swab of victim), ‘5a’ & ‘5b’ (i.e., vaginal smear of victim), ‘6a’ & ‘6b’ (i.e., vulval smear of victim), ‘7’ (i.e. pubic hair of victim), ‘8’ (i.e., matted pubic hair of victim), ‘13’ (i.e., blood stained swab of victim), ‘18b’ (i.e., lady’s shirt) & ‘18c’ (i.e., Pajami).* Initially, as the record would reveal, despite opportunity being granted on 25.01.2020, no question was put to PW8/FSL expert by the learned counsel for the accused in relation to the tampering of the DNA samples. Subsequently, while on 03.05.2023, PW8/FSL expert was recalled for cross-examination, nothing could emerge from the testimony of the said expert to suggest tampering of the DNA samples.



39. As noted above, the victim was medically examined immediately after the incident and the exhibits sent to FSL were also immediately seized and deposited in the *malkhana*. As also duly appreciated by the Trial Court, the chain of custody of the exhibits of the victim as well as that of the appellant from the point of their collection till their forensic examination is unbroken. Evidently, there exists nothing on the record to indicate that the exhibits of the victim or the appellant were tampered with. Once the said facts stood established, presumptions were drawn against the appellant. Except for denying the allegations, the appellant has failed to render any explanation as to how the appellant's DNA was found on the internal body parts of the victim. As rightly noted by the learned Trial Court, the same can only happen when the accused had sexually assaulted the victim.

40. In such circumstances, the appellant's failure in impeaching the credibility of the findings in the FSL report will prove fatal to his case. The unbreached chain of custody of FSL coupled with the initial statements of the victim and her family members make out a strong case beyond reasonable doubt against the appellant.

41. In the light of the aforesaid discussion, this Court does not find any infirmity in the conviction of the appellant and the same cannot be faulted with.

42. Insofar as the sentence of the appellant is concerned, the learned ASJ sentenced the appellant to undergo rigorous imprisonment for a



period of 25 years and to pay a fine of ₹25,000/- for the offence under Section 4 of the POCSO Act. The minimum sentence as per Section 4 of the POCSO Act is not less than 10 years but which may extend to imprisonment for life.

43. Considering the gravity and nature of the offence, this Court does not find any reason to interfere with the impugned order on sentence.

44. The present appeal is accordingly dismissed. Pending application also stands disposed of.

45. This Court appreciates the efforts put in by Mr. Asheesh Jain, Senior Advocate, learned *Amicus Curiae* in assisting the Court.

46. The Delhi High Court Legal services Committee is directed to pay the fees of the learned *Amicus Curiae* as per its scheduled rates and rules.

AMIT MAHAJAN, J

JANUARY 09, 2026

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