$~62

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

\# **CNR No. DLHC010548462026**

\+ CRL.REV.P. 665/2026, CRL.M.A. 35581/2026 & CRL.M.A. 35582/2026

SH SUSHIL KUMAR @ SHYAM .....Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

THE STATE OF DELHI AND ORS .....Respondents

Through: Ms. Kiran Bairwa, APP for the State with SI Anju, PS NIA.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 18.11.2026

1. The Petitioner challenges the order dated 13th October 2026, passed by ASJ-05 (POCSO) (North), Rohini Courts, Delhi, in SC No. 156/2022 arising from FIR No. 754/2021 registered at P.S. Narela Industrial Area, Delhi. By the impugned order, charges were framed against him under Sections 363/366/376(2)(n)/376(3) of the Indian Penal Code, 1860 ["IPC"] and Section 6 read with Section 5(l) of the Protection of Children from Sexual Offences Act, 2012 ["POCSO"]. The Petitioner seeks discharge.

2. The proceedings originated from a complaint lodged by the victim's mother on 4th December, 2021, reporting that her daughter, then stated to be approximately 16 years old, had been missing since 1st December, 2021. The victim was subsequently recovered from the Petitioner's house at Village Mathpura, District Sitapur, U.P., on 7th January, 2022. In her 164 CrPC statement recorded on 8th January, 2022, she alleged that the Petitioner and another person had forcibly taken her in a vehicle, confined her in a room at

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

the Petitioner's village, threatened her and subjected her to sexual relations against her will.

3. The Petitioner disputes this account. His principal contention is that the victim had voluntarily accompanied him, that they were in a relationship and had married on 2nd December, 2021. Reliance is placed upon her 161 CrPC statement, the documents executed in connection with the alleged marriage and the proceedings initiated before a court at Sitapur. He submits that the allegations of forcible abduction in the subsequent 164 CrPC statement are inconsistent with the victim's earlier statement. The Petitioner also questions the reliability of the school records concerning her age and relies upon the different date of birth appearing in her Aadhaar card. According to him, the Trial Court failed to properly appreciate these discrepancies and the judgments cited in support of his submissions.

4. At the stage of framing charges, the Court is required to consider the record of the case and the documents submitted therewith to determine whether there is ground for presuming that the accused has committed an offence. The Court is not concerned with proof of the allegations or the ultimate question of guilt, but with whether the material on record gives rise to a grave suspicion that the accused has committed the offence. While the Court may sift and weigh the material for this limited purpose, it must consider the broad probabilities of the case, the total effect of the evidence and any basic infirmities appearing in the record. It cannot, however, undertake a roving enquiry or weigh the evidence as if conducting a trial. Where the material discloses grave suspicion which the accused is unable to explain, a charge is justified; conversely, where it gives rise only to some suspicion, but not grave suspicion, discharge may be warranted. The Court

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

must also bear in mind that the law does not permit a mini trial at this stage. These principles, explained in ***Union of India v. Prafulla Kumar Samal & Anr.***[1] and ***State of T.N. v. N. Suresh Rajan & Ors.***[2]. govern the consideration of a challenge to an order framing charge. The scope of revisional interference is, however, limited. As explained in ***Amit Kapoor v. Ramesh Chander & Anr.***[3], interference is warranted where the order suffers from a palpable error, non-compliance with law, a completely erroneous decision or arbitrary exercise of judicial discretion. The revisional Court would ordinarily be reluctant to interfere with an order framing charge unless the case substantially falls within these parameters.

5. The inconsistencies highlighted by the Petitioner are apparent from the record and cannot be overlooked. The victim's 161 CrPC statement refers to her relationship with the Petitioner and her voluntary departure from home. However, the same statement also records allegations that she had been lured, forcibly married and threatened with harm to her parents. Her subsequent 164 CrPC statement gives a more detailed account of forcible abduction, confinement and sexual assault. The medical record also records a history of forceful sexual assault on multiple occasions, as narrated by the victim and her mother. The medical findings, however, do not independently establish that the alleged sexual acts were forced. These accounts require examination at trial. Their inconsistencies may have a bearing on the reliability of the prosecution case, but they do not presently justify rejecting it altogether.

---

[1] (1979) 3 SCC 4.
[2] (2014) 11 SCC 709.
[3] (2012) 9 SCC 460.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

6. The reliance upon ***S. Varadarajan v. State of Madras***[4] does not advance the Petitioner's case at this stage. The Supreme Court distinguished between "taking" a minor away and merely allowing her to accompany a person. It held that where a minor voluntarily leaves the protection of her guardian and joins the accused, something more must be shown to establish "taking", such as some inducement held out by the accused or his active participation in the formation of the minor's intention to leave. Such inducement or persuasion may also have been extended at an earlier stage and need not immediately precede her departure.

7. In the present case, however, the victim's statements contain specific allegations that she was lured and forcibly taken away. The matter, therefore, cannot be treated at this stage as one of the victim merely leaving voluntarily and the Petitioner subsequently accompanying her. Whether the victim left of her own accord or her departure was brought about by the Petitioner through inducement or force is a disputed question which must be examined at trial. The documents relating to the alleged marriage and the proceedings at Sitapur are relevant to that inquiry, but their existence does not, by itself, establish that the victim left voluntarily or that the subsequent sexual relations were consensual.

8. There is also the question of the victim's age. During the investigation, the agency collected a certificate issued by the school Principal, along with an extract of the admission register, recording her date of birth as 12th January, 2006. If this date is accepted, the victim was approximately 15 years and 10 months old on 1st December, 2021, when the alleged occurrence began. The Petitioner, on the other hand, relies upon the

[4] 1964 SCC Online SC 36; AIR 1965 SC 942.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

victim's Aadhaar card, which records her date of birth as 4th January, 2004. On that basis, she would have been above 16 years, but below 18 years, on the relevant date. The discrepancy is material, particularly because the charge under Section 376(3) IPC requires the victim to have been below 16 years of age. Her age must, therefore, be established through legally admissible and reliable evidence. At the same time, even the date of birth recorded in the Aadhaar card would place the victim below 18 years of age on the relevant date. The material presently available, therefore, does not establish that she was an adult for the purposes of POCSO.

9. In ***P. Yuvaprakash v. State***[5], the Supreme Court held that, wherever a dispute arises regarding the age of a victim under POCSO, the Court must follow the procedure prescribed under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ["JJ Act"]. The Court explained that the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, must first be considered. In their absence, the birth certificate issued by a Corporation, Municipal Authority or Panchayat is to be considered. It is only in the absence of these documents that age may be determined through an ossification test or any other latest medical age determination test. The Supreme Court also held that a transfer certificate and extracts of the admission register, which did not answer the description of the documents specified in Section 94(2), could not be relied upon to establish the victim's age. In the present case, apart from the extract of the admission register, the prosecution has collected a certificate issued by the school Principal recording the victim's date of birth. Whether this certificate answers the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

description of a date of birth certificate from the school under Section 94(2)(i), and whether it is duly proved, are matters to be examined on evidence.

10. The decision in ***State (GNCT of Delhi) v. Rohit Kumar***[6] does not assist the Petitioner. There, the victim had stated before the Magistrate that she had left with the accused of her own free will and had not alleged kidnapping or sexual assault. The Aadhaar card recorded her date of birth as 1st January, 1994, making her approximately 21 years old at the relevant time. The school record, on the other hand, was not supported by a birth certificate issued by the MCD or any other statutory authority. In the present case, the victim's 164 CrPC statement contains allegations of forcible abduction, confinement and sexual assault. Further, even the date of birth recorded in her Aadhaar card would place her below 18 years of age on the date of the alleged occurrence. More recently, the Supreme Court, in ***Saroj & Ors. v. IFFCO-TOKIO General Insurance Co. & Ors.***[7], referring to the UIDAI Circular No. 08 of 2023, reiterated that an Aadhaar card may be used to establish identity but is not, by itself, proof of date of birth. The Petitioner's reliance on the Aadhaar card, therefore, does not by itself displace the school records. The objections to those records must receive due consideration, but their evidentiary value is a matter for examination at the appropriate stage. They do not, on the material presently available, warrant discharge.

11. The alleged marriage does not furnish a defence to the offences under POCSO if the prosecution establishes that the victim was below 18 years of

---

[5] (2024) 17 SCC 684.
[6] 2023 SCC OnLine Del 5557.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

age when the alleged sexual acts occurred. Consent, even if established, would not take the alleged acts outside the statutory prohibition. The allegations of repeated sexual intercourse, read with the material indicating that the victim was below 16 years of age at the relevant time, also furnish sufficient grounds at this stage to frame charges under Sections 376(2)(n) and 376(3) IPC and Section 6 POCSO. The prosecution must, however, establish at trial the ingredients of each offence, including the victim's age at the time of the alleged acts.

12. The objection concerning Section 5(l) POCSO proceeds from an apparent confusion between the lowercase letter 'l' and the numeral '1'. Clause (l) of Section 5 expressly covers a case where penetrative sexual assault is committed upon a child more than once or repeatedly. The fourth count of the formal charge sets out precisely this allegation. The reference to Section 5(1) in the impugned order and the formal charge, at its highest, appears to be a misdescription of clause (l) of Section 5 POCSO. This discrepancy, by itself, does not invalidate the proceedings. There is, however, an inconsistency in the age recorded in the third count of the formal charge, which also requires correction. The Trial Court shall correct these particulars in accordance with law so that the charge accurately reflects the applicable statutory provision and the prosecution case.

13. The Petitioner has also referred to CRL.M.C. 9012/2023, filed before this Court challenging the order dated 6th November, 2023, whereby the Trial Court declined his application seeking an ossification test of the victim. This petition does not call for an examination of the correctness of that order. The proceedings in CRL.M.C. 9012/2023 shall remain unaffected

---

[7] 2024 INSC 816.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15

by the present decision. The question of the victim's age shall be determined by the Trial Court on the evidence ultimately led before it.

14. Having examined the impugned order and the material accompanying the chargesheet, this Court finds sufficient material to require the Petitioner to stand trial for the offences charged.

15. The present petition is, accordingly, dismissed. The Trial Court shall proceed with the trial in accordance with law. The observations made herein are confined to the consideration of the order on charge and shall not influence the Trial Court's assessment of the evidence at trial.

16. The pending applications shall also stand disposed of.

SANJEEV NARULA, J

NOVEMBER 18, 2026/ab

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 23/11/2026 at 11:40:15