IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:15.09.2025

\+ **CRL.A. 117/2023**

RAMESH @RAMESHWAR LOHRA .....Appellant
Through:

versus

STATE OF NCT OF DELHI .....Respondent
Through:

Advocates who appeared in this case:

For the Appellant : Mr. Faraz Maqbool (DHCLSC), Ms. Sana Juneja & Ms. Deepshikha, Advs.

For the Respondent : Ms. Kiran Bairwa, APP for the State SI Sangeeta, PS- SB Dairy
Ms. Kaadambari Singh, Sr. Adv. (*Amicus Curiae*) with Ms. Sushmita Srivastava, Adv.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.M.(BAIL) 152/2023 (for suspension of sentence) in CRL.A. 117/2023

1. The present application is filed seeking suspension of the appellant's sentence in the present case.

2. On 01.03.2015, information was received regarding a rape and thereafter, FIR No. 283/2015 was registered at Police Station Shahbad Dairy on the statement of the victim alleging that the appellant had

forcibly made sexual relations with her. It is alleged that around three years prior to registration of the FIR, the victim had come to the house of her cousin and sister-in-law, whereafter, she was taken by the appellant to his house on the pretext of taking care of the appellant's children. However, soon afterward, the appellant got the victim a job at the house of a lady–Simran in Ludhiana. After working in Ludhiana for three years, it is alleged that the appellant came to pick the victim on 27.02.2015 at about 5PM. It is alleged that the appellant took the victim to a *dhaba* near bus stand at Jalandhar where he raped her. When the victim allegedly started crying, the appellant threatened the victim with dire consequences if she raised any alarm. It is alleged that on the next morning, the appellant brought the victim to his house in Amar Jyoti Colony and again raped her.

3. As no documents could be found to establish the age of the victim, her bone ossification test was conducted, as per which, the victim's age was assessed to be more than 16 years but less than 18 years at the time of the test.

4. By the judgment dated 16.09.2022 (hereafter '**impugned judgment**'), the learned Trial Court convicted the appellant for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 376 of the Indian Penal Code, 1860. The learned Trial Court was heavily weighed by the statutory presumptions under POCSO Act. It was observed that although the allegations of the second instance of rape at the appellant's house did not add up, however, the statement of the victim does not suffer from

any material inconsistency and the prosecution had been able to establish its case beyond reasonable doubt.

5. By the order on sentence dated 24.12.2022 (hereafter '**impugned order on sentence**'), the appellant was sentenced to undergo rigorous imprisonment for a period of 8 years and to pay a fine of ₹10,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of 15 days.

6. The learned counsel for the appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt and the appellant has been falsely implicated in the present case. He submitted that no such incidents as alleged had taken place.

7. He submitted that there is no independent witness to corroborate the version of the prosecution and the learned Trial Court has failed to appreciate that there is no scientific or medical evidence to prove the alleged crime either.

8. He submitted that on a bare perusal of the evidence of the prosecutrix, it can be seen that the prosecutrix has improved her statement at every stage. He submitted that at first, when the victim's history of sexual assault recorded by the MLC Doctor, she did not state that she was also raped by the appellant in his home at Delhi, where the whole family of the appellant was residing.

9. He submitted that the entire case of the prosecution is based on the statement of the victim and considering that even the learned Trial Court has found the second allegation of rape to be untrustworthy, the conviction of the appellant cannot be sustained on the basis of the

evidence of the victim.

10. He further submitted that as the victim's age was assessed as between 16 to 18 years of age, the victim ought to have been treated as an adult by taking the higher age and further conferring the benefit of margin of error on the appellant. He placed reliance on the judgments in the cases of ***Court on its Own Motion v. State of NCT of Delhi*: 2024:DHC:4915-DB** and ***Shweta Gulati v. State Govt. of NCT of Delhi* : 2018 SCC OnLine Del 10448**. He submitted that as the victim was a major at the time of the incident in view of the aforesaid judgments, the learned Trial Court has erroneously taken the presumptions under POCSO Act into consideration.

11. He further submitted that had the victim been considered to be a major, the appellant would have been able to contest the case by also raising the plea of consent.

12. He submitted that the appellant has already undergone 3 years and 4 months in custody and he has to take care of his wife and five minor children.

13. As the victim was untraceable, this Court by order dated 27.02.2025 had appointed Ms. Kaadambari, Sr. Adv. As an *amicus curiae* to assist the Court on behalf of the victim. She submits that no *prima facie* case is made out in favour of the appellant and the learned Trial Court has duly considered the evidence on record before returning a finding of conviction.

14. She further submitted that the statement of the prosecutrix is sufficient for conviction and the same does not require corroboration.

She submitted that as per the medical evidence, the victim's hymen was found to be torn and there was slight bleeding in the victim's vagina. She stated that the owner of the guest house at Jalandhar (PW10) had also confirmed that the appellant and the victim had stayed at the guest house on 27.02.2015.

15. She submitted that the victim's age was duly proven and even otherwise, the evidence on record is sufficient to find the appellant guilty of the offence under Section 376 of the IPC.

16. I have heard the counsel and perused the record.

17. Before delving into the facts of the present case, it is imperative to discuss the law in relation to suspension of sentence. In the case of ***Omprakash Sahni v. Jai Shankar Chaudhary*:(2023) 6 SCC 123**, the Hon'ble Apex Court had succinctly summarised the law in relation to suspension of sentence and observed as under:

> *"**24.** From perusal of Section 389CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1)CrPC.*
> *xxx*
> ***30.** In **Kishori Lal v. Rupa [Kishori Lal v. Rupa, (2004) 7 SCC 638 : 2004 SCC (Cri) 2021]** , this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows : (SCC pp. 639-40, paras 4-6)*
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> > *"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of*

the appellant on bail. ***There is a distinction between bail and suspension of sentence.*** ***<u>One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond.</u>*** *The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.*

5. ***<u>The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail.</u>*** *In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.*

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. ***What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view****."*

31. *In* ***Vijay Kumar v. Narendra [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195]*** *and* ***Ramji Prasad v. Rattan Kumar Jaiswal [Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366 : 2003 SCC (Cri) 1197]*** *, it was held by this Court that in cases involving conviction under Section 302IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In* ***Vijay Kumar [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195]*** *, it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302IPC,*

the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

32. *The aforesaid view is reiterated by this Court in* ***Vasant Tukaram Pawar v. State of Maharashtra [Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281 : 2005 SCC (Cri) 1052]*** *and* ***Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160 : (2008) 1 SCC (Cri) 644]****.*

33. *Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal.* ***If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable.To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable.*** *The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."*

18. Thus, it is clear that at the time of considering an application for suspension of sentence, the Court is not required to reappreciate the evidence for rooting out lacunae or loopholes in a manner that would be fit for an appeal. This Court is required to exercise restraint and exercise its power to suspend the sentence in only exceptional cases when the offence involved in serious in nature. The test is to essentially make a *prima facie* assessment as to whether the conviction

is sustainable in law and to see if there are any such circumstances which warrant suspension of sentence.

19. In the present case, the allegations are undoubtedly grave in nature and it is the case of the prosecution that the appellant, who had helped the victim procure employment in Ludhiana, had raped her in Jalandhar while bringing her home and thereafter, at his house in Delhi. The appellant has been essentially convicted on the basis of the evidence of the prosecutrix.

20. Multiple arguments have been raised by the appellant to impress upon this Court that his conviction is unsustainable in law.

21. Much emphasis has been laid on the fact that the victim ought to have been treated as a major and the presumption under POCSO Act has been erroneously invoked in the present case. In the present case, the age of the victim was sought to be established on the basis of ossification test, wherein, it was found that the age of the victim was between sixteen to eighteen years at the time of test.

22. Reliance has been placed on decision in the case of ***Court on its Own Motion v. State of NCT of Delhi*** (*supra*), where a Division Bench of this Court had considered the question as to whether the Court is required to consider the lower side of the age estimation range in POCSO cases in which the age of the victim is to be determined by way of an ossification test. It was observed that in such cases, the upper side given in reference age is to be considered as age of victim and the margin of error of two years is further required to be applied. In the case of ***Shweta Gulati v. State Govt. of NCT of Delhi*** (*supra*) as

well, it was held that while determining the age of the victim, the benefit of doubt in age estimated by bone ossification test is to go to the accused. *Prima facie*, as per the decision in the said cases, there is some merit in the contention of the appellant that the victim was not a minor at the time of the alleged incidents.

23. In such a case, although the impugned judgment indicates that the appellant had not challenged the age of the victim before the learned Trial Court, however, the said issue cannot be brushed aside especially considering that the learned Trial Court has clearly been weighed by the statutory presumption under POCSO Act by way of which the onus shifts on the accused to establish his innocence. As in view of the aforesaid judgments, the victim is to be treated as a major, the mettle of the prosecution's case would require to be considered on its own merits without the benefit of any adverse presumption of guilt against the appellant.

24. The learned *amicus* has contested that irrespective of the issue of age, the evidence of the victim is cogent and the same is sufficient for upholding the conviction of the appellant for the offence under Section 376 of the IPC. While the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same, however, it is settled law that when the evidence of the victim is neither wholly reliable nor wholly unreliable, the Court has to be circumspect and look for corroboration of any material particulars [Ref. ***Nirmal Premkumar v. State :*** **2024 SCC OnLine SC 260**].

25. As pointed out by the counsel for the appellant, in the present case, the learned Trial Court has found the evidence of the victim in relation to the second incident of rape at the appellant's house to be untrustworthy as many people were present at the spot and the victim had not made such allegations to the doctor when her MLC was prepared or in her statement under Section 164 of the CrPC. It was further noted that the timing of the incident at the appellant's house is further called into question on account of the inconsistencies in the testimony of the victim and her cousin. As the testimony of the victim has been found to be not credible in relation to one of the two alleged incidents of rape, in the absence of any corroborative evidence, the same *prima facie* casts doubt on the case of the prosecution and credibility of the victim. There is a good possibility that the appellant may be acquitted in the present case.

26. Furthermore, it is stated that the appellant has already spent more than three years in custody out of the total awarded sentence of eight years. It is further stated that the appellant is responsible for taking care of his wife and five minor children, who are dependent on him.

27. Considering that the appellant has already undergone substantial portion of the sentence awarded to him and since the appeal is unlikely to be adjudicated expeditiously, this Court considers it apposite to suspend the impugned order on sentence till the pendency of the present appeal.

28. The appellant is directed to be released on furnishing a personal

bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned Trial Court, on the following conditions:

a. The appellant shall not contact the victim or any other witnesses associated with the case;
b. The appellant shall furnish a proof of residence where he shall reside upon his release and shall not change the address without informing the concerned IO/ SHO;
c. The appellant shall, under no circumstances, leave the country without the permission of the Court;
d. The appellant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
e. The appellant shall appear before this Court as and when directed.

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

AMIT MAHAJAN, J

SEPTEMBER 15, 2025