IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment reserved on: 11.12.2025***
Judgment pronounced on: 16.03.2026

\+ **CRL.A. 1436/2025 & CRL.M.(BAIL) 2101/2025**

MOHD. MUJAHID .....Appellant

versus

THE STATE (GOVT. OF NCT) DELHI & ANR. ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Adit S. Pujari, Adv. (DHCSLC) with Mr. Manvender Singh Shekhawat and Mr. Harshwardhan Puskin Sharma, Advs.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State with Insp. Satbir Singh, PS Jaitpur

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.A. 1436/2025

1. The present appeal is filed challenging the judgment dated 23.07.2025 (hereafter '**impugned judgment**') and order on sentence dated 31.07.2025 (hereafter '**impugned order on sentence**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Saket Courts, Delhi

in Sessions Case No. 352/2019 arising out of FIR No. 111/2019 ('**FIR**'), registered at Police Station Jaitpur.

2. By the impugned judgment, the learned ASJ convicted the appellant for the offences under Section 377 of the Indian Penal Code, 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

3. By the impugned order on sentence, the appellant was sentenced to undergo rigorous imprisonment for a period of 15 years for the offence under Section 6 of the POCSO Act, and to pay a fine of ₹20,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of two months. Further, for the offence under Section 377 of the IPC, the appellant was sentenced to undergo rigorous imprisonment for a period of 10 years, and to pay a fine of ₹10,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of one month.

4. The brief facts of the case are as follows:

a. On 05.06.2019, the FIR was registered at Police Station Jait Pur for offences under Section 377 of the IPC and Section 6 of the POCSO Act on the basis of the statement of the victim, who was around 11 years old at that time. It is the case of the prosecution that the appellant was the victim's neighbour. Allegedly, on the said date, at around 2PM in the afternoon, when the victim had gone to the toilet outside his room, the appellant enticed the victim to come to his room

with a promise to show a movie on his mobile. When the victim went to the house of the appellant, he allegedly took off the victim's pants as well as his own pants and sodomised the victim by inserting his penis into the anus of the victim. The victim screamed loudly and started crying, whereafter, his brother T came to the spot. On returning home, the victim told his mother about the entire incident. In the meantime, the appellant ran away from the spot.

b. In his statement under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**'), the victim supported the case of the prosecution. During recording of his evidence, the victim turned hostile and asserted that he had named the appellant as the culprit out of nervousness.

c. By the impugned judgment, the learned Trial Court convicted the appellant after finding that the prosecution had reasonably proved its case and the appellant had been unable to rebut the statutory presumptions under POCSO Act. It was observed that even though the victim had not identified the appellant as the culprit and asserted that he had not seen the offender, however, the presence of semen of the appellant on the recovered pant of the victim proved that the appellant had committed penetrative sexual assault with the victim. It was further observed that the evidence of the victim's father (PW2) as well as that of the doctor who seized the pant of the victim (PW5) evidenced that the pant in question belonged to the victim.

Consequently, the appellant was sentenced by way of the impugned order on sentence.

d. Aggrieved by the same, the appellant filed the present appeal.

e. On 17.11.2025, the Investigating Officer informed this Court that the victim could not be contacted, whereafter, this Court proceeded with the matter after noting that the victim had turned hostile in the trial.

5. The learned counsel for the appellant submitted that the impugned judgment has been passed without appreciating the material on record and the appellant has been erroneously convicted in the present case. He submitted that the deposition of the relevant witnesses makes it clear that the appellant has been falsely implicated in the present case.

6. He submitted that the victim has not supported the case of the prosecution and he has explicitly admitted that he had lied during the recording of his statement under Section 164 of the CrPC. He submitted that the victim only took the name of the appellant out of fear and nervousness, as is also asserted by the victim's father (PW2) during cross-examination. He submitted that the victim's brother (PW3) has failed to identify the appellant during his examination.

7. He submitted that the victim's mother (PW10) has also not supported the case of the prosecution as she has deposed that the sexual assault occurred with the victim at the public toilet outside their

room which casts doubt on the alleged place of occurrence of the offence as it is the prosecution's case that the assault took place in the appellant's room.

8. He further submitted that the victim did not name the appellant during his medical examination. He submitted that PW5 (the doctor who conducted the victim's medical examination) has found that the victim's anal sphincters were intact and there is no mention of the nature of sexual violence or how much time had elapsed since the incident.

9. He submitted that one of seized exhibits is that of the pant jeans of the victim having dirty stains. He submitted that although clotted blood was found present on the anal area of the victim, no blood was found on the seized jeans pant, which further raises doubt that the alleged pant was not the same pant worn by the victim at the time of the incident. He further submitted that there is doubt that the said exhibit has been manipulated as PW5 has not mentioned in her report that there were any type of stains on the jeans of the victim.

10. He submitted that the prosecution has also failed to prove that the alleged pant belonged to the victim and the victim himself did not identify the same during examination before the learned Trial Court. He submitted that the chain of custody of the alleged pant is also under doubt as the malkhana register was not produced in the present case.

11. He submitted that the FSL report is unreliable and the match of the appellant's DNA with the semen stain on the pants supposedly belonging to the victim is of no consequence as the chain of custody is unclear in the present case. He submitted that the whereabouts of the exhibits from 05.06.2019 till 17.06.2019, when the same were sent to FSL, remains unclear and there is no malkhana entry register or deposit register to evidence safe custody. He submitted that the samples were thus susceptible to tampering and there is a two week delay in sending the samples to FSL, which is fatal to the case of the prosecution.

12. The learned Additional Public Prosecutor for the State vehemently contested the submissions made by the counsel for the appellant. He submitted that the learned ASJ has aptly appreciated the material on record before returning a finding of conviction against the appellant.

13. He submitted that the appellant has not been able to rebut the statutory presumptions under the POCSO Act. He further emphasized that the appellant had admitted the statement of HC Sarjeet regarding deposition of case property in malkhana, and he has failed to make out a case for tampering of exhibits, which were sent for FSL.

ANALYSIS

14. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of

Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. If the Appellate Court thinks it necessary, it can take additional evidence on record before disposing of the appeal as well.

15. The present case is one where after naming the appellant as the culprit in his initial statements, the victim in his examination has resiled and stated that he had not seen the face of the person who had caught hold of him and assaulted him. The victim has deposed that he had only named the appellant as he was present there. Even the victim's mother has deposed that the victim had taken the name of the appellant out of fright as he suspected the appellant to be the offender, however, the victim had not seen the appellant at the time of assault.

16. Pertinently, the victim had not denied that he was sexually assaulted in the present case. The fact of sexual assault has not been denied by the victims family members either. Further, as rightly noted by the learned Trial Court, the allegation of sexual assault is duly corroborated by the MLC of the victim, which indicates that a tear was present over the anal verge of the victim. It was found that tenderness and clotted blood was also present. This led to the doctor (PW5) opining that there is evidence of recent insertion over the anal area.

17. Noting that the testimony of the victim is duly corroborated in regard to commission of the sexual offence, the learned Trial Court endeavored to delve into the identity of the culprit. Rejecting

arguments of defence in relation to tampering of samples, the learned Trial Court found that the FSL report proving presence of DNA of accused in form of semen on pant of the victim was incriminating. Thus, the appellant's conviction rests on the FSL findings.

18. The case of the appellant essentially rests on the victim having turned hostile and the findings in the FSL report being unreliable on account of absence of malkhana register as well as delay in sending samples to FSL.

19. Adverting to a catena of other precedents, recently, the Hon'ble Apex Court has discussed the reliability of DNA evidence as well as necessity of a proper chain of custody in the case of ***Kattavellai v. State of T.N.*** **: 2025 SCC OnLine SC 1439**. The relevant portion is as under:

> *30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of vital evidence, etc. Similar questions arise in connection with the semen sample taken from the accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. PW-56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned.* ***It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer***

forthcoming from the record.

31. In ***Anil v. State of Maharashtra [(2014) 4 SCC 69]*** *this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected.* ***We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions.***

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33. ***Rahul (supra)*** *was a case concerning the kidnap, rape and murder of a woman, wherein 3 persons were convicted by the Special Fast-Track Court, Dwarka Courts in Sessions Case No. 91 of 2013. These persons had kidnapped a woman as she returned from work, proceeded to do horrible things to her, and then dumped her lifeless remains in a field, from where it was discovered four days later. The DNA evidence, here, was rejected because it remained in the police Malkhana for two months and in such time, the possibility of tampering could not be ruled out.* ***It was also held that neither the Trial Court nor the High Court had examined the underlying basis of the findings in the DNA reports or whether the techniques used had been reliably applied by the concerned expert. As such, it was concluded that the DNA profile, in the absence of such evidence, had become highly vulnerable when the collection and sealing of the samples sent for examination was not free from suspicion.***

34. ***Prakash Nishad v. State of Maharashtra [(2023) 16 SCC 357]*** *was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted.* ***DNA evidence had to be rejected by this Court on the grounds that there was a delay in***

> ***sending the samples to the FSL, which was unexplained.*** *It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out.* ***The need for expediency in sending samples to the concerned laboratories was underscored.***
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> *35. This case, incidentally, if not unfortunately, is another one of the like of the above.* ***Despite the presence of DNA evidence, it has to be discarded for the reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant-convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with.*** *Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology.* ***It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or investigators, have been careless in the handling of such sensitive evidence."***
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> (emphasis supplied)

20. It is imperative to note that the learned Trial Court was essentially persuaded to rely upon the FSL report as it was found that the prosecution had been able to prove that the samples remained sealed throughout. While the same may be a persuading factor which may lend credence to the non-tampering of the samples, the present case is one where the prosecution is *entirely* silent about the whereabouts of the said seized samples.

21. Mere assertion of the samples not being tampered is not sufficient to conclude that the samples remained in self-same condition from the time of seizure till they reached FSL. In his

testimony, the investigating officer (PW13) deposed that the sealed exhibits of the accused appellant as well as the victim were handed to him, which he had later sent for FSL. However, PW13 provides no clarity as to where the seized samples were stored in the intervening period. Although PW13 has denied any assertion of tampering, his testimony remains silent about the reason for delay in sending of samples to FSL as well, whereby, even though the seizure happened on 05.06.2019, the samples were dispatched to FSL only on 17.06.2019.

22. Pertinently, although HC Sarjeet was listed as a witness in charge sheet for adducing case property as well as malkhana record, his statement was admitted by the appellant under Section 294 of the CrPC. Unfortunately, a perusal of the statement shows that the same only relates to handover of the *pullandas* to Constable Jagram for deposition in FSL, Rohini. There is nothing to show that the samples were promptly deposited in the malkhana, and there is ambiguity about the safe keeping of the materials between 05.06.2019 and 17.06.2019.

23. The criminal jurisprudence is premised on the principle that a conviction cannot be sustained on the basis of mere surmises or conjecture. It is well-settled that unless the prosecution proves safe custody of the seized samples, the FSL report cannot be accepted merely because of there being no material on record which evidences manipulation.

24. At the same time, such lapses by prosecution, done deliberately or inadvertently, cannot lead to automatic acquittals. Inaction of concerned officers ought to be dealt with a strict hand. In ***Kattavellai v. State of T.N.*** (*supra*) as well, the Hon'ble Apex Court has lamented that despite presence of evidence, the same is to be discarded due to carelessness of doctors or investigators. It is the duty of the Court to proactively ensure, within the bounds of law, that complete and absolute justice is done, and to make sure that an accused who is guilty is not allowed to get off scot-free. The failure of the prosecution to prove the safe custody of the seized exhibits, which can link the appellant to the crime, does not preclude the Court from getting to the root of the matter and calling for evidence to satisfy itself on this aspect.

25. The sensitivity of the allegations in the present case cannot be understated. The case pertains to sexual assault of a minor boy in vicinity of his home, where despite turning hostile, the victim has *not denied* the sexual assault. However, as noted above, as the victim has not identified the appellant as the culprit during examination, the only evidence which links the accused to the incident is the FSL report, the reliability of which remains under cloud due to absence of malkhana record in relation to the seized samples as well as unexplained delay in sending the exhibits for FSL. Pertinent questions in relation to *where* such samples were stored and in what condition as well as *what* caused the delay in dispatching samples have been raised. The record indicates that the prosecution evidence was only concluded on

27.03.2025. There is a good chance that the prosecution may be able to adduce the relevant record to establish the safe custody of the samples. In such circumstances, this Court is not inclined to discard the FSL report at this juncture and is of the opinion that additional evidence is necessary to be taken in this respect.

26. Undisputably, this Court in its capacity as an Appellate Court is empowered to take additional evidence if it deems necessary. In such circumstances, by invoking the powers under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 311 of the CrPC) read with Section 168 of the Bharatiya Sakshya Adhiniyam, 2023 (earlier Section 165 of the Indian Evidence Act, 1872), this Court considers it apposite to direct the recording of further evidence on the aspects underlined in the preceding paragraphs by way of examination of the investigation officer as well as the concerned malkhana-in-charge, who was in charge of the samples at the relevant time.

27. The learned Special Court is directed to record additional evidence on this limited aspect within a period of 6 months, and to send the same to this Court thereafter. It is made clear that the prosecution and the defence would be entitled to lead additional evidence on the said aspects. Let a digitized copy of the TCR be sent back to the Special Judge forthwith.

28. Let a copy of this order be communicated to the concerned Principal District & Sessions Judge for compliance and listing before

the Special Court on 08.04.2026.

29. The parties are directed to appear before the concerned Special Court on 08.04.2026.

30. The hearing in the present appeal is accordingly deferred.

31. List the appeal on 28.10.2026 before this Court.

32. It is clarified that at this stage, this Court has only considered the limited aspect of the reliability of FSL and not expressed its opinion in relation to the other arguments advanced by the appellant.

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33. The present application has been filed by the appellant seeking suspension of his sentence and his release on bail till the disposal of the present appeal.

34. In case the prosecution is unable to prove safe custody of the seized samples so as to lend credence to the findings in the FSL report, *prima facie*, in the absence of any material which corroborate the initial allegations levelled by the victim, there is a good probability that the appellant will be acquitted in the present case.

35. It is mentioned in the application that the appellant has clean antecedents and he is the sole bread earner in his family.

36. In such circumstances, considering that the appellant has already spent around seven years in custody and recording of further

evidence and the final adjudication of the appeal will take considerable amount of time, this Court therefore considers it apposite to suspend the impugned order on sentence till the pendency of the present appeal. 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 respectively, 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, under no circumstances, leave the country without the permission of the Court;
c. The appellant shall furnish a proof of residence where he shall reside upon his release, and he shall not change the address without informing the concerned IO/ SHO;
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.

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

AMIT MAHAJAN, J

MARCH 16, 2026/*'KDK'*