



2025:DHC:3819-DB



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

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Date of decision: 09.05.2025

+ CRL.L.P. 507/2023

STATE

.....Petitioner

Through: Mr. Laksh Khanna, APP for the
State with SI Kiran Dayal.

versus

AWADH RAJ

.....Respondent

Through: Mr. Satyendra Mishra & Mr.
Praveen Seera, Advs.**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****J U D G M E N T (O R A L)****SUBRAMONIUM PRASAD, J.****CRL.M.A. 27325/2023 (Delay of 484 days in filing the appeal)**

1. This application is preferred by the Appellant seeking a condonation of delay of 484 days in filing the present Petition.
2. The records indicate that the Impugned Judgment was delivered on 30.01.2020. Accordingly, considering the directives issued by the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation*¹, the Petition/Appeal ought to have been filed on or before 16.04.2022.
3. The learned APP for the State states that there was a huge pendency of cases due to COVID-19 pandemic during the relevant

¹ (2022) 3 SCC 117



period within which the petition ought to have been preferred.

4. In order dated 10.01.2022, the Hon'ble Supreme Court, in ***In Re: Cognizance for Extension of Limitation*** (supra), directed as follows:

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

(Emphasis supplied)

5. We are of the view that the Appellant/State would not have



gained anything by voluntarily delaying the filing of the present Petition. Further, being mindful of the object of the **Protection of Children from Sexual Offences Act, 2012²**, this Court is inclined to condone the delay.

6. The delay stands condoned.

7. The application stands disposed of accordingly.

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8. The present petition/ appeal has been filed under Section 378(1) of the **Code of Criminal Procedure, 1973³** against the judgment dated 30.01.2020 passed by Ld. ASJ-01 (West), Special Court (POCSO), Tis Hazari Courts, Delhi, acquitting the Respondent/Accused in Sessions Case No. 56578/2016 arising out of FIR No. 139/2013, registered at Police Station - Moti Nagar, under Sections 376 and 506 of the **Indian Penal Code, 1860⁴** and Sections 3, 4, 5 and 6 of the **POCSO Act**.

9. The present case involves a minor child, who at the time of the alleged incident was 7 years of age.

10. As per the statement of the prosecutrix, the Accused visited her house on 24.04.2013 and sent her sister out of the room and forcibly committed sexual intercourse with the prosecutrix. Thereafter, the Accused threatened the prosecutrix not to disclose the act done by him to anyone.

11. The prosecutrix and her sister informed about the said incident to their mother on 26.04.2013 and a PCR call was made on the same day.

12. After the completion of the investigation, a charge sheet under Sections 376 and 506 of the IPC and Sections 3, 4, 5 and 6 of the

² POCSO Act

³ Cr.P.C.

⁴ IPC



POCSO Act was filed against the Accused.

13. The prosecution examined 15 witnesses.

14. The learned Trial Court, after considering the material on record, has acquitted the Respondent/Accused broadly on the basis of the following reasons:

(a) In the **Medico-Legal Certificate**⁵ dated 27.04.2013, mother of the prosecutrix had complained about anal intercourse whereas in the deposition in the learned Trial Court, the prosecutrix had alleged that there was vaginal intercourse;

(b) There was material contradiction in the manner in which the information was given to the parents;

(c) The plea of the alibi put forth by the Accused, in support of which the Accused produced three witnesses, *namely*, DW-1 (a fellow devotee), DW-2 (brother of the Accused) and DW-3 (employer of the Accused). DW1 and DW2 deposed that on 24.04.2013 they were present at the Nirankari Sant Samagam at Nirankari Colony, near Burari, Delhi, alongwith the Accused. DW-3 also deposed that one day before the date of the incident, the Accused had taken off to attend the Nirankari Sant Samagam at Nirankari Colony, near Burari, Delhi.

15. The State has filed the instant petition for grant of a leave to appeal against the Impugned Judgment passed by the learned Trial Court.

16. Learned APP for the State has drawn the attention of this Court to the MLC bearing no. 10118/13 dated 27.04.2013, which is about 3 days after the incident, to highlight that the prosecutrix as well as her

⁵ MLC



mother had alleged sexual assault on the prosecutrix to have occurred around 2:00 P.M. on 24.04.2013. The MLC further records that the prosecutrix had stated that her undergarments were taken off by Accused, after which he took off his own undergarments and then established unnatural anal intercourse with her. Notably, the MLC also records that there was no history of attempt of vaginal intercourse and that tenderness around the anal region of the prosecutrix was found.

17. Learned APP for the State further submits that the MLC also records some discharge by the Accused being found on the right thigh of the prosecutrix. The MLC also notes that the mother of the prosecutrix has produced the unwashed undergarment/*pyjama*, which was of black-ish colour, worn by the prosecutrix on 24.04.2013, i.e., at the time of the occurrence of the alleged incident.

18. In light of the contents of the MLC, learned APP for the State submits that the prosecutrix's testimony where she stated that the Accused had penetrated her urinal part, could be because of some confusion in the mind of the prosecutrix/minor.

19. Learned APP for the State also relies on the **Forensic Science Laboratory**⁶ report, wherein semen of the Accused is stated to have been found on the *pyjama* of the prosecutrix.

20. *Per contra*, learned counsel the Respondent/Accused contends that in the MLC, as well as the statements given under Sections 161 and 164 of the Cr.P.C., the consistency of the statement of the prosecutrix was that unnatural anal intercourse had been done by the Accused; while before the learned Trial Court, the prosecutrix stated had that vaginal intercourse took place.

⁶FSL



21. Learned counsel for the Accused also states that there is a history wherein the Accused had given some loan to the mother of the prosecutrix and the Accused has, therefore, been falsely implicated by them in order to ensure that the loan is not demanded back.

22. The learned counsel for the Accused highlights inconsistencies regarding the handling of the prosecutrix's undergarment/*pyjama*, as this crucial piece of evidence was submitted to the authorities three days after the alleged incident by the prosecutrix's mother. Further, while the MLC notes that the undergarment/*pyjama* was not washed, the prosecutrix's mother, in her deposition, stated that she had washed it. Despite this contradiction, the FSL Report records the presence of the Accused's semen on the undergarment/*pyjama*. He, therefore, states that the learned Trial Court had rightly inferred that the contradiction between the MLC and deposition of the mother of the prosecutrix casts a doubt on the veracity of the entire FSL Report.

23. At this juncture, the learned APP for the State placed emphasis on the fact that blood was discovered on the bedsheet/*bichona* which had been recovered from the place of the incident.

24. In response, learned counsel for the Respondent/Accused states that there has been a shifting stand in the case of the prosecution, inasmuch as at the initial stage, it was stated that there was no blood stain found on the bedsheet/*bichona* whereas ultimately a blood stain was stated to have been found on the bedsheet/*bichona* which casts a doubt that it could have been planted.

25. Heard the learned counsel for the parties.

26. The parameters for grant of leave to appeal have been dealt with by the Apex Court in **State of Maharashtra v. Sujay Mangesh**



Poyarekar⁷. The relevant paragraphs of the judgment read as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by subsection (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave.

⁷ (2008) 9 SCC 475



But it also failed to record reasons for refusal of such leave.”

(Emphasis supplied)

27. Therefore, at the stage of deciding whether to grant leave to appeal, the Court is not required to apply the strict standard of '*proof beyond a reasonable doubt*'. Instead, the Court only needs to consider whether there is a *prima facie* case as to whether the appeal raises serious questions that justify further examination. At this preliminary stage, the Court does not conclude whether the judgment being challenged is so perverse that it must be overturned.

28. The material on record indicates that the incident was reported by a 7-year-old girl. The MLC records tenderness around the anal area of the prosecutrix. Additionally, the FSL report indicates the presence of semen, and a bedsheet/*bichona* exhibits blood stains.

29. Applying the principles laid down by the Hon'ble Supreme Court, this Court finds that, at this stage, there is sufficient material to grant leave to appeal.

30. Needless to say that the observations made herein are solely for the purpose of deciding the application for leave to appeal. They shall not be construed as the Court's opinion on the correctness or otherwise of the judgment rendered by the learned Trial Court.

31. The Respondent/Accused is directed to be present before the Joint Registrar for the purpose of bail bonds and further proceedings as per law.

32. Let the digitized copy of the Trial Court Record be requisitioned and the paperbook be prepared and supplied to the learned APP for the State and to the Counsel for the Respondent/Accused, before the next date of hearing.

33. List before Joint Registrar on 29.05.2025.



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34. List the appeal for hearing before the Court on 16.10.2025.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

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