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

% ***Date of decision: 01.09.2026***

CNR No. DLHC010040392025

+ **CRL.A. 129/2025 & CRL.M.A. 3181/2025**

JASPAL SINGHAppellant

Through: Ms. Sunita Arora, Advocate
(DHCLSC) with son of the appellant.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the State with
SI Avaneesh Kumar, PS Krishna
Nagar.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), the sole accused in Sessions Case No. 464/2016 on the file of the Additional Sessions Judge-06/Special Judge (POCSO Act), East District, Karkardooma Court, Delhi assails the judgment dated 14.10.2022 whereby he has been



convicted for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 15.07.2013, the accused passed obscene comments and sexually assaulted the prosecutrix by hitting her on the chest/breast. The trial court, *vide* order dated 01.07.2016, framed a Charge for the offence punishable under Section 10 of the PoCSO Act against the appellant/accused, to which he pleaded not guilty.

3. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 14.10.2022, held the accused guilty of the offence punishable under Section 10 of the PoCSO Act and hence convicted him accordingly. Aggrieved, the present appeal has been filed.

4. Along with the appeal, Crl.M.A.3181/2025 under Section 528 of the BNSS seeking stay of conviction of the appellant and



Crl.M.A.3183/2025 under Section 432 read with Section 528 of the BNSS, seeking permission to lead additional evidence concerning the medical condition of the appellant have been filed. The second application is seen allowed as per order dated 10.09.2025.

5. When the matter came up for hearing, the learned counsel appearing on behalf of the appellant/accused submitted that the appellant was mentally unsound at the time of commission of the offence. It was submitted that, despite the availability of medical records indicating the appellant's mental illness, this aspect was never raised by the counsel who represented the appellant before the trial court. As the appellant was tried when he was not fit to stand trial, the conviction is liable to be set aside. The trial court is to be directed to permit the appellant to adduce evidence to substantiate his defence under Section 84 of the Indian Penal Code, 1860 (the IPC).



6. On going through the records it is seen that after the impugned judgment was pronounced on 14.10.2022, the trial court issued production warrant for the production of the accused before the Court for the purpose of sentencing. The Jail Superintendent concerned apprised the trial court that the appellant is not mentally fit and is suffering from dementia. The trial court directed the accused to be examined at the Institute of Human Behaviour and Allied Sciences (IHBAS), Delhi, which recommended hospitalisation for proper assessment. Consequently, a Medical Board was constituted, which opined that the accused was suffering from dementia with Behavioural and Psychological Symptoms (BPSD), along with Cerebral Atrophy. Thereafter, *vide* order dated 08.05.2023, the trial court concluded that the appellant is suffering from severe global cognitive impairment and is also suffering from cerebral atrophy and that, due to his mental condition, the accused is unable to effectively defend himself. Finding so, the trial court held that the proceedings against the



accused is liable to be postponed. The relevant portion of the said order reads thus:-

“23. Accordingly, this court is of the opinion that accused is unable to make his defence and therefore the proceedings against the accused is liable to be postponed. In the present case, the accused is in custody and further consequential order shall be passed in terms of section 330 (3) CrPC.

24. Let close relative or the person who is taking care of the accused appear on next date of hearing and indicate at which place the accused shall be kept and what steps would be taken by him to ensure that accused does not cause harm either to himself or any other person.”

7. As rightly pointed out by the learned Additional Public Prosecutor, Chapter XXV of the Code of Criminal Procedure, 1973 (Cr.P.C.), corresponding to Chapter XXVII BNSS, deals with the provisions relating to accused persons of unsound mind. Section 329 Cr.P.C., corresponding to Section 368 BNSS, deals with the procedure to be followed if an accused is found to be of unsound mind. A reading of the order dated 08.05.2023 of the trial court makes it clear that the procedure contemplated under Section



329 Cr.P.C. has been followed by the learned trial Judge. The said order also states that consequential orders in terms of Sub-Section (3) of Section 330 Cr.P.C. would be passed. It was submitted by the learned counsel for the appellant that an application has already been moved before the trial court for placing on record materials to show that the appellants/accused was incapable of understanding the consequences of his act at the time of the alleged incident and that the same is still pending consideration. As the trial court has rightly followed the procedure contemplated under Section 329 Cr.P.C. (368 BNSS), the trial court is at liberty to proceed to complete the formalities contemplated under Section 330(3) Cr.P.C.

8. Admittedly, the present appeal has been preferred before the appellant/accused has been sentenced. As per Sub-Section (2) to Section 374 Cr.P.C., corresponding to Section 415 BNSS, any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge in which a sentence of imprisonment



for more than 7 years has been passed against him or against any other person convicted at the same trial, can appeal to the High Court. It is only when the sentence also is pronounced, the judgment becomes complete. This is clear from a reading of the provisions contained in Chapter XXVII Cr.P.C. It is only when the sentence is awarded the judgment becomes complete and can be appealed against. (See **Rama Narang v. Ramesh Narang (1995) 2 SCC 513**).

9. When this aspect was brought to the notice of the learned counsel for the appellant, it was submitted that she may be permitted to withdraw the appeal as per instructions received from the son of the appellant with liberty to file an appeal at the appropriate stage.

10. In light of the submissions made, the appeal is dismissed as withdrawn with liberty to file appeal at the appropriate stage. The trial court can complete the formalities contemplated under Section 330(3) Cr.P.C. if not already completed. Thereafter, in the



event of resumption of the trial as contemplated under Sections 331 and 332 Cr.P.C., the trial court shall afford an opportunity to the appellant/accused to establish whether he was incapable of understanding the consequences of his act at the time of the commission of the offence.

11. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

SEPTEMBER 01, 2026

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