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

% Reserved on :11.08.2025
Pronounced on :19.08.2025

\+ **CRL.A. 3/2023 and CRL.M.(BAIL) 197/2025**

FAIZAN AHMED .....Appellant

Through: Mr.Adit S. Pujari, Mr.Zeeshan Thomas and Ms.VamyaChabra, Advocates

versus

STATE (NCT OF DELHI) .....Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Nitin
Ms.Astha, Advocate (DHCLSC) with Ms.Megha Singh, Advocate for victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CRL.M.(BAIL) 197/2025 (suspension of sentence)

Since arguments in the appeal itself have been heard, this application seeking suspension of sentence during the pendency of the appeal has become infructuous and is disposed of as such.

CRL.A. 3/2023

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 26.05.2022 and the order on sentence dated 27.09.2022, passed by the learned Additional Sessions Judge-01, POCSO, South East District, Saket Courts, New Delhi, in SC No. 1523/2016(Old No. 122/15) arising out of FIR No.734/2015 registered under Sections 342/377

of Indian Penal Code, 1860 (IPC) and Section 5(m) read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO') at P.S.Jamia Nagar, Delhi.

Vide judgement of conviction and order on sentence, the appellant has been sentenced to undergo rigorous imprisonment for a period of 20 years for the offence punishable under Section 6 of the POCSO Act along with payment of fine of Rs.20,000/-. He was further sentenced to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 377 IPC along with fine of Rs.5000/-. The appellant was further sentenced to simple imprisonment for 06 months for the offence punishable u/s 342 IPC. In default, the appellant was sentenced to undergo simple imprisonment for 06 months. All the sentences were directed to run concurrently and the benefit of Section 428 CrPC was also extended to the appellant.

2. The facts, in a nutshell, noted by the trial court are extracted hereunder:

> *"1. In brief the case of the prosecution is that on 03.06.2015 at about 11.30 a.m. at flat House no. xxx within the jurisdiction of PS Jamia Nagar, accused wrongfully confined victim Master 'A' s/o Sh. 'M' (The names of the child victim, his family members and complete address are being withheld to protect their identity as per the mandate of section 33(7) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act), a minor boy aged about 6 years and committed aggravated penetrative sexual assault, committed carnal intercourse against the order of nature with him by inserting his penis into his anus and thus thereby he committed offences punishable under section 342/377 IPC & 6 of the POCSO Act."*

3. On completion of investigation, charges were framed and charge sheet came to be filed under Sections 342/377 of IPC and Section 5(m) read with

Section 6 of POCSO Act. The appellant pleaded being not guilty and claimed trial.

4. Prosecution examined total 15 witnesses, the material witness being the child victim, who was examined as PW-1, father and mother of the child victim were examined as PW-2 and PW-3 respectively. The Principal of the school where the child victim studied was examined as PW-4. The MLC of the child victim was exhibited through PW-5 and of the appellant through PW-5. Learned Judicial Magistrate, who proved the statement of the child victim under Section 164 Cr.P.C. was examined as PW-15. The other witnesses were formal in nature and related to various aspects of the investigation.

5. The appellant in the statement recorded under Section 313 of the Cr.P.C. denied the prosecution case and took the defence that injuries received by the child victim might be on account of beatings given by the appellant with a comb and that the prosecution case is unbelievable. He did not lead any evidence.

6. Learned counsel for the appellant raised the following contentions:

(i) Though the incident statedly occurred on 03.06.2015 at about 11-11.30 A.M., *Rukka* was recorded at 12.30 A.M. on 04.06.2025 i.e., after almost 13 hours. The *Rukka* was prepared on the statement of the father of the child victim, who only stated about the occurrence of *galatkaam* (unnatural sexual assault) without giving any specific details.

(ii) The child victim's testimony is untrustworthy as the statement is not corroborated by the medical evidence as injuries noted in the MLC could have been possible by hitting with a comb.

(iii) The MLC is sought to be proved by the prosecution through the Record Clerk and not by the concerned doctor. The FSL report is also to be disregarded as not only there was a delay of one month and four days in sending the sample to the FSL, but there is also a discrepancy in the number of articles as well as on parcel no.1, which described it as inner garment of child, whereas the other proceedings noted it as one blue-coloured pant of child victim.

(iv) No opportunity was given to cross-examine PW-10 and PW-11, who carried out the *Rukka*. The judgment was pronounced on the same day on which the final arguments were heard. In support of the aforesaid, the learned counsel has relied on the decision of this court in *Sunil vs. State*[1] and the judgment of the Supreme Court in *Irfan alias Bhayu Mevati vs. State of Madhya Pradesh*[2].

7. The contentions are refuted by the learned APP duly supported by the learned counsel for the child victim. It is contended that the testimony of the child victim as well as his father contained no embellishment. Both were not even confronted with any improvement or contradictions. While referring to the MLC, it was further contended that the injury in the perianal region is in the internal part of the anus, which is not possible through comb. There was no delay in either reporting of the incident or arrest of the appellant.

8. I have heard the learned counsel for the parties.

9. The child being aged six years at the time of incident is not in dispute. In this regard, it is worthy to note that neither in Trial Court nor in the

[1]Neutral Citation Number 2023/DHC/000036
[2]2025 SCC OnLine SC 359

appeal, any contentions were raised on this aspect. As noted above, the investigation commenced with the reporting of the incident by the father of the child victim in his statement recorded under Section 161 of the Cr.P.C. which is Ex.PW-2/A. The complainant stated that on 03.06.2015 at night, he noticed that his son i.e., the child victim was very upset and lying on a bed. He was looking sad. On being asked, the child victim started weeping and informed that in the morning around 11-11.30 AM while he was playing along with children outside his house, the ball with which he was playing went inside the house of the appellant. Though the appellant returned the ball to the child victim, but later when the child victim was alone, he took him inside his house situated at the ground floor of the building and committed the wrong act.

Coming to know about the incident, the father of the child victim called at 100 number and the child victim was taken for the medical examination. In the history given, it was stated that the appellant had committed unnatural sexual assault.

10. The father, during his court deposition, reiterated his aforesaid statement (Ex.PW2/A). He identified his signatures on the seizure memo (Ex.PW2/B) prepared at the time of medical examination as per which five exhibits were handed over by the concerned doctor to the police vide seizure memo dated 04.06.2015. The witness was cross-examined. He denied the suggestion that the child victim was not playing in the *gali*, but in the park. He further denied the suggestion that after medical examination of his son, no exhibits were taken or sealed. He stated that the pant of the child victim was a blue-coloured**,** full pant. Besides the pant, the police had also seized the T-shirt of his son. He stated that he was illiterate, but clarified that the

statement made by him was recorded by the police in the police station and he had signed the same. He denied the suggestion that the appellant was falsely implicated at the instance of IO.

11. The child victim was examined as PW-1. Before recording the statement (without oath), the trial court put questions to the child victim to assess as to whether he was competent to understand the questions and give answers. On being satisfied, the statement was recorded in question-answer form. The same is extracted hereunder:

> *"Q. 1. Where does Faizan live?*
> *Ans: Khambekepiche wale gharmein.*
> *Q.2. What is the distance between your house and house of accused?*
> *Ans: It was situated near my house, (the witness is pointing the distance with his finger on the sofa set.*
> *Q.3. Have you been knowing Faizan in the past?*
> *Ans: No.*
> *Q.4. What had happened with you?*
> *Ans: Faizan mujhepakadkar le gayatha.*
> *Q.5. Where had he taken you?*
> *Ans: In his house.*
> ***Q.6. What happened in the house?***
> ***Ans: He did battamizi with me.***
> ***Q.7. What battamizi was done with you?***
> ***Ans: Wo meri gaand maar rahatha.***
> *Q.8. What were clothes worn by Faizan?*
> *Ans: Bhulgaya.*
> *Q.9. What were clothes worn by you?*
> *Ans: Pant and Shirt.*
> ***Q.10. How had he done battamizi done with you?***
> ***Ans: Usneapni pant kholithi aur meri pant bhi. Fir pehleusne kangha (comb) lagaya (the witness is pointing out towards his anus) aur fir apneaagewala (the witness is pointing out towards his private part) yaha (the witness is pointing out towards his anus) gusayatha. Mujhedardhuatha.***
> *Q. 11. What happened thereafter?*
> *Ans: Fir usnemujhechordiyatha and I came back at my house.*
> *Q.12. When had this happened i.e. in day or night?*
> *Ans: KaribDopahar me.*
> *Q.13. Did you tell/inform anyone about the incident?*
> *Ans: Shaam ko Abbu ko batayatha. (told the father in the evening)*

Q.14. Then what happened?
Ans: Abbu ne police ko bulaya aur fir hum thane gaye aur doctor kepaasgaye.
Q.15. Doctor ke pass kyahuatha?
Ans: Unohnedawai di thi aur gharchalegaye the.
Q.16. What clothes you were wearing when you went to doctor?
Ans: Pant and shirt.
Q.17. Do you remember the colours of your clothes?
Ans: Shirt ka yaadnahi aur pant neelatha.
Q.18. What happened to those cothes?
Ans: Unohne pant rakh lithi aur dusri pant pehankar me ghar aa gayatha. Shirt ghar par hai.
Q.19. Have you come to the court earlier after the incident?
Ans: No. (While saying so the witness also move his head horizontally) again said Yes me police uncle kesaathayatha aur batayatha."

12. The child victim was further asked if he could identify the appellant to which he answered in affirmative and thereafter, correctly identifiedthe appellant as the one who had committed the offence. Furthermore, parcel no.1 which had been sent for FSL and contained a pair of blue coloured pants was shown to the child victim in Court during his deposition and he duly identified them to be the one she wore at the time of the incident.

13. During cross-examination, the child victim stated that initially he along with other children were playing in park. He stated that though he had seen the appellant prior to the incident but had never spoken to him. The appellant had taken him to his house and nobody was present there. He further clarified that there was only one room where the appellant had taken him and incident took place on bed. Though initially his mouth was not gagged, but later when he tried to scream, the appellant had put a hand on his mouth. He denied the suggestion that no wrong act was done by the appellant and further that family members were present in the house. He further denied that the park was at far distance from the house of the appellant.

14. Testimony of the mother of the child victim, examined by the prosecution as PW3, is cumulative of the testimony of her husband. She also testified on the date of the incident that her son was wearing a blue-coloured full pant.

15. The medical examination report was exhibited as Ex. PW5/B and MLC Card as Ex. PW5/C. The following observations were made in local examination:

> *"**Local examination:***
> *Examination done in Knee-Elbow position*
> *Blood stains are present around peri-anal region.*
> *Peri-anal region is reddened and is acutely tender*
> *Anal Sphincter is Intact*
> *A longitudinal tear of size 1 x 0.2 cm is present at 6' o clock position in the peri-anal region associated with redness and tenderness."*

16. At this stage, the court also takes notes that the MLC further records as to what specimen were preserved. The relevant extract reads as under:

> *"**Specimen preserved:***
> *1. Blood on-gauge*
> *2. Blue coloured pant*
> *3. Peri-anal swab*
> *4. Anal swab*
> *5. Control swab have been preserved, sealed, signed and handed over to the police along with the sample of seal."*

17. The samples seized during the medical examination were sent to FSL. The exhibits were put to DNA examination. The conclusion in the FSL report, exhibited as Ex. PW13/A, is extracted hereunder:

> *"DNA profiling (STR analysis) performed on the source of exhibit' 1' (pants-semen),' 1' (pants-blood), exhibit '2' (blood gauze of child victim), exhibit '3' (perianal swab of child victim), exhibit '4' (anal swab of child victim), exhibit '6' (underwear of accused faizan), exhibit '7' (blood in gauze of accused faizan), exhibit '8' (penile swab of accused faizan). are sufficient to conclude that-*
> *1. DNA profiles generated from the source of exhibits '1' (pants- semen), exhibit '6' (underwear of accused faizan) & exhibit '8' (penile swab of*

accused faizan) are matching with the DNA profile generated from the source of exhibit '7' (blood in gauze of accused faizan).

2. *DNA profile generated from the source of exhibit '1' (pants- blood), exhibit '3' (perianal swab of child victim) & exhibit '4' (anal swab of child victim) are matching with the DNA profile generated from the source of exhibit '2' (blood gauze of child victim).”*

18. Coming now to the first contention raised by the appellant that the first information given by the father of the child victim lacks specific particulars. It is pertinent to note that *Rukka* itself records *galatkaam*. It explains *galatkaam* as unnatural sexual assault. The father of the child victim has in his testimony also described it in so many words. The MLC conducted in the early morning hours of 04.06.2015 at 1.10 A.M. records history of assault as a case of “sodomy”.

19. The child victim in his statement recorded under Section 164 Cr.P.C. had stated that the appellant had committed ‘*badtamizi*’ i.e., wrong act. He further stated that the appellant had taken into his home where he opened his pant and committed the act of sodomy (*gaandmaari*). In his statement made before the Court, the child victim again while answering question no.6, 7 and 10 stated in detail as to the nature of act committed by the appellant. A doubt has been raised to the genuineness of the sample that was seized and sent to FSL. Learned counsel contended that while six items were seized belonging to the child victim, five items were seized belonging to the accused/appellant. However, only details of nine items were registered in the *maalkhana* register as well as in the FSL report. The contention to this extent is meritless as with each seized memo, one sample seal of the ‘Department of Forensic Medicine, AIIMS Hospital’ was also seized alongside and as such only nine items were seized, the other two being the sample seals.

20. Now coming to the other part of the contention that the road certificate contains wrong description of the article and as such doubt is raised on the FSL report. In this regard, as noted above, the observations in the MLC records details of the specimen seized during medical examination wherein it specifically mentions seizure of one blue-coloured pant. The child victim in his statement before the Court as well as the mother and father of the child victim have stated that he was wearing a blue-coloured pant on the date of incident. The seizure memo (Ex. PW2/B) also defines one of the other articles to be blue-coloured pant. It appears that only at the time of the deposit of the sealed articles with *maalkhana*, one of article has been mis-described as an inner garment. The doubt, if any, is further cleared by reading the FSL report, which not only stated that the seals were found to be intact, but describes parcel no.1 as one sealed cloth parcel sealed with the seal of Department of Forensic Medicine, AIIMS Hospital, New Delhi containing Ex.1 described as inner garment of the child victim. The Ex.1 was further described as one blue denim pant kept in polythene. Even otherwise, the child victim himself has identified the pants which were sent for FSL as parcel No.1 as the ones he wore during the incident. The father of the child victim (PW2), as well as Ct. Manveer (PW10) who accompanied the victim and his father for the medical examination and received the exhibits of the child victim, including the pants from the doctor, identified their signatures on the seizure memo (Ex.PW2/B), further establishing the factum of seizure of pants.

21. In view of the statement of witnesses stating that the child victim was wearing blue-coloured pant and seizing of the same being recorded through the seizure memo and the description noted in the FSL report, the contention

raised thereby doubting the seizure of pant of child victim, lacks merit and is rejected.

In this regard, learned counsel has further stated that NIL opportunity was given to cross-examine PW-10 and PW-11, who had collected the exhibits at the time of the MLC and took them to FSL respectively. It is pertinent to note that the appellant was initially represented through his privately engaged counsel and later, through counsel appointed on behalf of legal aid. Pertinently, though an application under Section 311 was filed for the purpose of recalling PW3 and PW4 for cross-examination, however, no such application was filed for recalling of PW-10 & 11. Neither any such application has been filed in the present proceedings. Even otherwise, this court having carefully looked into the contention has reached a conclusion that no discrepancy exists in description of the article i.e., the blue-coloured pant in its seizure and being sent to the FSL. As noted above, the FSL report notes the samples seized to be intact and as such mere description of the article as inner garment of the child victim would not bring the seizure of the article in doubt.

Insofar as contention relating to delay in sending sample is concerned, it is enough to note that the seized samples were duly deposited in the *malkhana* and when received by the FSL, the seals on same have been found to be intact. It is not the contention that seals were tampered or that after the samples were seized, they were deposited after a questionable delay.

22. Coming to yet another contention that whether injury could have been caused by the combin the perianal region. The appellant failed to explain as to how hitting with comb could have caused such injury on the child victim

when he was wearing the blue-coloured denim pant. It is not the appellant's case that the child victim was hit with a comb after removing his pant.

It is also contended that the prosecution's practice of proving an MLC through a record clerk is questionable as it deprives the accused of his valuable right to elicit further response and to cross-examine including on the aspect of nature of injury.

23. Coming to the decisions cited on behalf of the appellant, it is enough to note that the same was passed in the facts of each case. While in the case of *Sunil Kumar* (supra), the matter was remanded back as in the said case, the final arguments were heard on the same day when the statement of the appellant under Section 311 Cr.P.C. was recorded. The trial court had proceeded without the appellant being represented through legal aid. It was noted that as many as five witnesses could not be cross-examined and the counsel was not represented at the time of final arguments, which is not in the present case. Reliance on decision of *Irfan alias Bayu Mevati* (supra), is also meritless in the present case as while in that case, it was held that the trial court had not given the accused an opportunity to cross examine the authors of FSL report as it had asked the defence to produce and examine them on the same day. However, in the present case, there was no such compulsion imposed by the Trial Court. Like noted earlier, though an application was filed under Section 311 Cr.P.C. for recall of the relevant witnesses however, no need was felt to seek recall of PW-10 and PW-11 and, at this stage it cannot be contended that the trial proceeded with undue haste. In present case, the trial court had fixed matter was fixed for final hearing two days after the recording of statement of accused under Section 313 CrPC. Merely because the Trial Court had pronounced the judgment on

the same day it had heard final arguments, the same has not caused any prejudice to the appellant and cannot be a ground to challenge the judgment of conviction.

24. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. A three Judge Bench of the Supreme Court in *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*[3] has held that Section 29 of the POCSO Act comes into play once the foundational facts are established. It holds as follows:-

> *"35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is."*

25. Gainful reference in this regard may also be made to the decision of a Co-ordinate Bench of this Court in *Veerpal v. State*[4], wherein it was held as under:-

> *"20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability."*

[3](2025) 2 SCC 399
[4]2024 SCC OnLine Del 2686

In the present case, the prosecution has been able to lay the foundation of the facts and thus brought into play Section 29 of the POCSO Act, which presumption the appellant has miserably failed to rebut. The appellant failed to discredit the prosecution witnesses or demonstrate any fatal flaws or gaps in the prosecution case. The clear and cogent testimony of the child victim, including him identifying the appellant in Court, as well as supporting FSL report, have squarely established the prosecution case.

26. This Court, with the aid of learned counsels, has thoroughly examined the records and finds no reason to differ with the conclusion arrived at by the trial court. Consequently, the appeal is dismissed and the impugned judgment convicting the appellant as well as the order on sentence are upheld.

27. Copy of the judgment be communicated to the Trial Court, as well as concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 19, 2025
pmc