



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

% Date of Decision: 26.08.2025

+ **CRL.A. 1102/2024**

HASAN MOHD

.....Appellant

Through: Mr.Vishesh Wadhwa, Advocate with
appellant in person

versus

STATE(NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with
SI Sneha Bhakat

Mr.Himanshu Anand Gupta, Advocate with
Mr.Siddharth B., Mr.Shekhar, Ms.Navneet and
Mr.Mike Desai, Advocates for DSLSA

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL.M.(BAIL) 1980/2024

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. 1102/2024

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 03.06.2024 and order on sentence dated 13.08.2024, ASJ(FTSC)(POSCO)-01, West, Tis Hazari Courts, Delhi in SC No. 57719/2016 arising out of FIR No. 125/2015 registered under sections 376/342 IPC at P.S. Mayapuri, Delhi.



Vide the aforesaid order on sentence, the appellant was directed to undergo RI for a period of 06 months without fine for the offence punishable under section 342 IPC; further directed to undergo RI for a period of 01 year for the offence punishable under section 12 POCSO Act alongwith fine of Rs. 2000/-, in default whereof to undergo RI for 03 months. Benefit under section 428 Cr.P.C was provided to the appellant and sentences were directed to be run concurrently.

The sentence of the appellant was suspended by this court vide order dated 27.11.2024

2. The facts, in a nutshell, noted by the Trial Court are extracted hereunder:

“On 06.03.2015 vide DD no. 23A SI Savita Sarkar vide DD no. 26A reached at Jhuggi No. W-22/182, Rewari Line, Mayapuri, Phase-I, New Delhi (jhuggi of accused) where SI Rajender Prasad, Ct. Nemi Chand, complainant 'RK', victim 'K'(Presumed Name - withheld in order to protect the identity of the victim), aged about 5 years and accused Hasan Mohd, who was caught hold by public persons were found present. On inquiry, complainant 'RK' told that accused Hasan Mohd. had tried to do wrong act with her daughter/victim 'K' after wrongfully confined her and applying oil on the vagina of the victim girl 'K' after removing all her clothes.”

3. The prosecution examined 11 witnesses in support of its case. The victim/K was examined as PW1. The father of the victim/complainant was examined as PW2. Phoolmati, the landlady of the appellant, who denied knowing the appellant or that he was his tenant, was examined as PW4. Shyam Kishan Pal, was examined as PW5, was the neighbour who called the police at 100 number. Fufa/uncle of the victim was examined as PW7.



The rest of the witnesses were formal who deposed as to various aspects of investigation.

On the other hand, statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied all evidence and claimed that he was falsely implicated.

4. Learned counsel for the appellant submits that the victim has failed to identify the appellant, and even PW4 and PW5 have not supported the prosecution case. It is further submitted that the victim could not recall her testimony despite being permitted to refresh her memory. Further, even the testimonies of PW2 and PW7 are also stated to be unreliable due to previous enmity between them and the appellant.

5. Learned APP for the State defends the impugned judgement and submits that victim could not identify the appellant due to the victim's tender age which was around 5 years old at the time of the incident. It is further submitted that the testimonies of PW2 and PW7 have been consistent and truthful.

6. A perusal of the child victim's testimony reveals that she does not remember residing in Delhi when she was around five years old. However, she has been informed by her parents that the family was living in Delhi at that time. She further deposed that she does not know when her family shifted to Allahabad, U.P. The only memory she retains is of visiting her Bua's (paternal aunt) place during Holi. She categorically stated that she does not remember the incident, as she was too young and a considerable time has since elapsed. She only recalled that one uncle had taken her in an auto.

During the cross-examination of the child victim, her statement



recorded under Section 164 Cr.P.C. and Section 161 Cr.P.C. were read over to her, however, even then she was unable to recall the incident. She did not identify the appellant.

7. However, PW-2, complainant and father of the victim, deposed that on 06.03.2015, during Holi festival, while he along with his daughter/victim/PW-1 was sitting at his *Jija's*/PW7 grocery shop, the appellant came there around 1:30 PM and stated that he would take the child around, whereafter he took her on his motorcycle. When the appellant did not return, after 15-20 minutes, PW2 and PW7 went to the appellant's jhuggi, found it bolted from inside, and on peeping inside, they saw the appellant nude and the child victim without lower clothes. The appellant then wrapped a towel around himself, put on the child victim's shorts and brought her outside, upon which PW2 immediately took the child victim and tried to console her. Thereafter, they returned to PW7's shop, where the appellant followed and pushed PW2, and upon gathering of local persons, he was beaten whereafter he fled to his jhuggi. PW2 bolted the door from outside till police arrived on being called by a neighbour. Police took the victim/PW1, PW2 and the appellant to PS Mayapuri and later, the victim/PW1 was taken to be medically examined at DDU Hospital, where she disclosed that the appellant had applied oil on her private parts, though PW2 refused internal medical examination. His statement Ex.PW2/A was recorded, site plan Ex.PW-2/B prepared, and the appellant was arrested vide Ex.PA-06. In cross-examination, he denied suggestions that shop was closed on Holi, and that the incident never took place, and further denied that the accused was falsely implicated due to prior enmity. PW7/Uncle of the



victim has deposed on the similar lines as of PW2, and has corroborated the case of the prosecution.

8. At this stage, learned counsel for the appellant, on instructions from the appellant, who is present in court, states that the appellant, being fully aware of the consequences, does not wish to challenge his conviction under the aforesaid section; however, he prays that the sentence awarded to him be modified to the period already undergone by him, which is about 5 months 5 days in custody.

9. As per the order dated 27.11.2024 passed by this Court, the sentence of the appellant was suspended till the next date of hearing, and he has been on release since then. The appellant has already undergone approximately 5 months of custody, and his overall conduct during this period has remained satisfactory according to the order on sentence. It is further stated that the appellant has no prior involvements. The appellant is stated to be the sole breadwinner of his family, earning his livelihood by running a barber shop. His family comprises of his aged father, brother, and two married daughters.

10. At this stage, the victim's father, who is present in the Court, submits that the entire amount of compensation awarded by the trial court stands received.

11. In view of the above, the Court is of the opinion that the ends of justice will be served if the appellant's sentence is modified to the period already undergone. The sentence of fine, however, shall remain as it is. Incase of non-payment of fine within two weeks, the appellants shall undergo the default sentence.

12. The present appeal is partly allowed and disposed of in the above terms.



2025:DHC:7547



13. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent, for information and necessary compliance.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 26, 2025
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