



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

% Date of Decision:27.08.2025

+ **CRL.A. 329/2021 & CRL.M.(BAIL) 595/2022**

MAppellant

Through: Mr. Harsh Prabhakar, Advocate

versus

THE STATE (NCT OF DELHI)Respondent

Through: Ms. Shubhi Gupta, APP for State
Mr. Faraz Maqbool, Advocate for the
Complainant

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT (ORAL)

CRL.M.(BAIL) 595/2022 (suspension of sentence)

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

CRL.A. 329/2021

1. By way of present appeal filed under Section 374 (2) Cr.P.C, the appellant has assailed the judgment of conviction dated 01.04.2021 and order on sentence dated 15.07.2021, ASJ-01 (POCSO) South-East District, Saket, New Delhi in SC case no. 2081/16 arising out of F.I.R. No. 435/14 registered under Sections 376/377/506 IPC & 6/14 POCSO Act, P.S. Jamia Nagar.

Vide the impugned judgment and order on sentence, the appellant was



convicted under Section 6 POCSO Act and sentenced to undergo rigorous imprisonment for 12 years and along with a fine of Rs. 15,000/-. Further, he was sentenced to undergo rigorous imprisonment for 6 months alongwith fine of Rs. 5,000/- under Section 506 IPC. Both sentences were to run concurrently and in the event of his failure to pay the total fine amount, the convict was directed to undergo simple imprisonment for a period of 6 months. The benefit of Section 428 Cr.P.C was given to the appellant.

2. Briefly put, the facts as recorded by the Trial Court in the Impugned Judgement are:-

*“In brief the case of the prosecution is that prior to reporting the matter to the police on 19.06.2014 at House No. ** ..., Jamia Nagar, New Delhi within the jurisdiction of PS Jamia Nagar accused MR' committed repeated aggravated penetrative sexual assault upon his minor daughter i.e. victim/prosecutrix Baby AR (The name of child victim and her family members as well as accused, being her father 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)], aged about 11 years by sucking her breasts, making her suck his penis and by inserting his finger and penis into her vagina. It is further the prosecution case that he also criminally intimidated the victim by scaring/threatening that her mother will hate her in case she disclosed the incident to anybody and thus thereby he committed offences punishable under section 376/377/506 IPC & 6/14 POCSO Act. Charge sheet was filed in the court and in compliance of Section 207 Cr.P.C, accused was supplied the documents. Thereafter vide order dated 09.09.2015 charge for offences under section 506 IPC & 6 POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.”*

3. In order to prove the charges against the accused, the prosecution had examined 11 witnesses. PW-1, the victim, narrated in detail that her father repeatedly subjected her to sexual assault. She deposed on same lines as her statement made during investigation. In her cross-examination, she stated



that the assaults continued for about two years. She denied suggestions of tutoring or false implication. PW-2, the mother of the victim, corroborated her testimony. She deposed that her daughter had handed her a letter disclosing the sexual assaults by the appellant. On confronting him, he denied said incidents and tore the letter. She later approached the police after consulting an NGO. She proved the complaint Ex. PW-1/A and the consent form Ex. PW-1/B. In cross-examination, she admitted disputes between her and the appellant but denied that the present case was motivated on that account. PW-3, Dr. Richa Vatsa of AIIMS, examined the prosecutrix and found an old hymenal tear. She proved the MLC Ex. PW-1/B. In cross-examination, she admitted that hymenal tears may occur in other activities, but denied manipulation of findings. The other witnesses, being formal and police witnesses, proved registration of FIR, preparation of rukka, and other routine aspects of the investigation.

After completion of prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded. He denied all incriminating circumstances, claimed false implication at the instance of his wife, and alleged that the present case was fabricated due to matrimonial discord. He did not lead any defence evidence.

4. The defence argued that the appellant was falsely implicated due to strained relations with his wife and that the prosecutrix was tutored in collusion with her mother and an NGO. They highlighted six days delay in lodging the FIR, the prosecutrix's silence for two years, contradictions about a letter she allegedly wrote, non-examination of the NGO, grandmother, and younger sister, concealment of the appellant's stay in Kanpur and lack of medical corroboration apart from an old hymenal tear.



5. In response, the Learned Add. PP for the State contended that the prosecutrix's testimony alone was sufficient but was also corroborated by her mother, medical evidence, and Section 164 Cr.P.C. statement. Minor inconsistencies were said to be immaterial. The victim's age (about 11 years) was established by her birth certificate. Delay in FIR was explained as normal in sexual offences due to stigma, and her silence was attributed to threats by the accused. Allegations of tutoring were dismissed as baseless, and no motive for false implication was shown. The State relied on statutory presumptions under Sections 29 and 30 of the POCSO Act, which the accused failed to rebut.

6. The trial court, after carefully considering the submissions and evidence on record, found that the prosecution had successfully proved the charges against the accused under Section 6 of the POCSO Act and Section 506 IPC. The Court held that the delay of six days in lodging the FIR was satisfactorily explained, noting that in cases of sexual assault, particularly within the family, delay is natural given the stigma involved. Allegations of tutoring by the mother or NGO were dismissed. Minor inconsistencies between her deposition and her Section 164 CrPC statement, or between her and her mother's versions about the discovery of the letter, were considered trivial and not material. The Court also found the medical evidence corroborative, noting the old hymenal tear and history of finger penetration consistent with the victim's account. Non-examination of the grandmother or younger sister was held immaterial as they were not eyewitnesses. Applying the statutory presumption under Sections 29 and 30 of the POCSO Act, the Court held that the prosecution had laid the foundational facts, and



the accused had failed to rebut the presumption of guilt. Consequently, the victim's testimony, supported by her mother's statement and medical evidence, was found credible and trustworthy, leading to the conviction of the accused for aggravated penetrative sexual assault and criminal intimidation.

7. At this stage, Mr. Harsh Prabhakar, Learned counsel for the appellant states on instructions that the appellant, having understood the implications, does not wish to press the present appeal on merits and that he be released on the period already undergone, he refers to the nominal roll on record which states that the appellant has undergone 11 years 07 months as on 15.08.2025_ out of the total sentence of 12 years imposed upon him under sections 376/377/506 IPC & 06/14 POCSO Act. Further, he refers to the following extract in decision of the Supreme Court in Sonadhar v. State of Chhattisgarh decided on 06.10.2021 in **SLP (CRL)No. 529/2021**:

“We thus issue the following directions:

- a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.*
- b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.*
- c) We are of the view that in fixed term sentence cases, an endeavour be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.*
- d) A similar exercise can be undertaken even in respect of 'life*



sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.”

8. The appellant is produced from Jail no. 8 and 9 through V.C., by Jail Warden Vikas, Tihar and reiterated the aforesaid request. He further states that he is remorseful and undertakes not to get in touch with the victim directly or indirectly. The appellant's nominal role is on record as per which the appellant has an unexpired portion of sentence which is only 05 months 23 days as on 15.08.2025 and is not stated to be involved in any other case and his jail conduct is also reported to be satisfactory. Further the appellant states that fine imposed of Rs.20,000/- will be deposited by him.

9. Keeping in view the aforesaid, the medical report and the testimony of the victim as well as other facts noted while upholding the appellant's conviction, the sentence of the appellant is modified to the extent that the appellant is directed to be released on the period already undergone by him in custody. However, the sentence of fine imposed upon the appellant, as well as the default sentence for non-payment of fine, is maintained. If the appellant fails to deposit the fine imposed upon him by the Trial Court of Rs.20,000/-, he shall undergo the sentence in default of payment of fine as contained in the impugned order on sentence. The appellant further states that he would not contact the prosecutrix directly or indirectly in any manner.



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10. The appeal is partly allowed to the aforesaid extent. In so far as aspect of compensation is concerned, it is informed by Mr. Faraz Maqbool learned counsel for the complainant that the she has received the entire amount of compensation. Appeal is accordingly disposed of in the above terms.

11. 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, 2025/sn