



2025:DHC:6749



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 12.08.2025*+ **CRL.REV.P. 25/2024**

THE STATE (GNCT OF DELHI)Petitioner

Through: Mr. Rajkumar, APP for the
State

versus

SURAJRespondent

Through: Mr Kishor Kumar Mishra and
Mr. Aditya Mishra, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the petitioner-State seeks setting aside of order dated 05.08.2023 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge-06/POCSO, Shahadra, Karkardooma Courts, Delhi [hereafter '*Sessions Court*'], whereby the respondent-accused was discharged case arising out of FIR No. 127/2022, registered on 26.02.2022, at Police Station Shahdara, Delhi for the commission of offences punishable under Sections 354D/354/509 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Sections 10/12 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].



2. Brief facts of the case are that the FIR was registered on the statement of the minor victim 'J', aged about 10 years and a student of 5th standard. She informed the police that she was aware of the concept of good touch and bad touch, having been taught about the same in school. She alleged that a boy named Suraj, who used to sit with his father at a jeweller's shop, had been troubling her for the last one month. According to her, about 4-5 days prior to the lodging of the complaint, at around 3-4 PM, when she had gone to feed the dogs, the accused had touched her breasts and hips. Thereafter, he had allegedly asked her to sit with him on his motorcycle, to be friends with him, and had made obscene gestures with his lips and eyes. She further alleged that he would stalk her whenever she went to feed the dogs. It was also alleged that about a week prior to the complaint, when she was passing by his shop, the accused had removed his pants and underwear and made obscene gestures towards her. She had also narrated the said incident to her mother. She also told the police that she had not sustained any injury. Thereafter, her statement was recorded under Section 164 of Cr.P.C. before the learned Magistrate, wherein she reiterated her allegations. Upon completion of investigation, a chargesheet was filed before the concerned court for the commission of the alleged offences.

3. The learned Sessions Court, after hearing arguments on charge, passed the impugned order dated 05.08.2023 discharging the accused/respondent. The relevant observations of the Sessions Court are as under:



“1. Heard on charge.

2. The allegation levelled against accused Suraj in the FIR are that or 5 days before 26.02.2022 (date of registration of FIR) when the victim was, at about 3-4 p.m., passing through a lane (gali), she was inappropriately touched by the accused, in that lane, touched her hips and breasts. It is also alleged that the accused pressed her breasts there.

3. The CCTV footage of the place of incident had been collected by the IO. The IO had collected CCTV footage for 21.02.2022 and 22.02.2022. No incident as alleged in the FIR is found to have taken place upon having seen the footages. The CCTV footages were played in the Court today and all the concerned present saw the same.

4. The FIR is delayed. The exact date of commission of offence was not informed to the police - neither in the FIR nor in response to the notice made by the IO to the complainant and her mother in this regards.

5. It is also alleged that about one month prior to 26.02.2022, one day, when the victim was passing by the shop of the accused, the accused stripped naked and exhibited his body to the victim.

5.1 The co-ordinates of time of commission of this alleged act are not provided by the victim. The reference of time is vague and information delayed. There is no material on record to substantiate the accusation.

6. The accused **Suraj s/o Sh. Rajeev** r/o 1/7319, Gali Mandir Marg, East Gorakh Park, Shahdara, Delhi, is accordingly discharged in the present case. His bail bond/surety bond, if any, also hereby discharged. Original documents of the accused, if any, be returned after cancellation of endorsement...”

4. The learned counsel appearing for the petitioner-State submits that the victim had made specific and consistent allegations of stalking and molestation against the accused in her complaint/FIR dated 26.02.2022, which she duly reiterated in her statement recorded under Section 164 of Cr.P.C. It is urged that in the complaint dated



26.02.2022, the victim had mentioned that the incident occurred 4-5 days prior thereto. It is contended that the reliance placed by the learned Sessions Court on the CCTV footage, at the stage of charge was misplaced, especially when the FSL report *qua* the said footage was still awaited. Moreover, the CCTV footage pertained to 21.02.2022 and 22.02.2022, whereas at that stage, the victim had been unable to state the exact date of the incident, which could only have been clarified during trial. It is further submitted that the victim was only 10 years old at the time of the incident, and the learned Sessions Court failed to appreciate that at the stage of framing of charge, the Court is only required to examine whether there exists material giving rise to strong suspicion against the accused. The delay in lodging the FIR, if any, and the precise date of the incident are issues which can only be explained and established during trial. It is, therefore, contended that the impugned order has resulted in a miscarriage of justice and deserves to be set aside.

5. The learned counsel appearing for the respondent, on the other hand, supports the impugned order and submits that there is no infirmity or illegality in the same. It is argued that the CCTV footage of the place of incident did not reveal any occurrence of the alleged acts, and in the absence of any corroborative material, there was no ground to frame charges against the accused/respondent.

6. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.



7. At the outset, this Court is constrained to note that the impugned order on charge passed by the learned Sessions Court is based on findings which are contrary to the record itself.

8. Firstly, this Court notes that though the learned Sessions Court, in the first paragraph of the impugned order, has mentioned “heard on charge”, the order does not specify as to who was heard, what submissions were advanced, and what the Court meant by the phrase “on charge” as this expression is an incomplete sentence.

9. Further, in the second paragraph of the order, the learned Sessions Court records that the allegations against the accused were that he had inappropriately touched the victim in a lane by touching her hips and breasts. In the very same order, it is then recorded that there was a delay in lodging the FIR. This juxtaposition of facts is not accompanied by any analysis of the actual contents of the complaint or the statement of the victim recorded under Section 164 of Cr.P.C. A plain reading of both the complaint and the statement under Section 164 Cr.P.C. reveals that the FIR was lodged about 4-5 days after the alleged incident in question. This aspect is not in dispute and is apparent from the record. The complaint further records that the said incident had occurred at about 3–4 PM in the lane when the victim had gone to feed the dogs, when the accused had inappropriately touched her. Thus, the place of occurrence, and the tentative date of the incident were all specifically mentioned in the complaint as well as reiterated in the statement recorded under Section 164 of Cr.P.C.



10. The victim herein was a child of merely 10 years of age, studying in Class 5th. In cases involving a child of such tender years, the impact of sexual harassment, stalking, or molestation on the mental and emotional state of the victim cannot be ignored. A child victim, in such circumstances, may take time to process the incident, overcome fear or confusion, and muster the courage to disclose the same to a parent or guardian. The delay of four days in lodging the FIR in such a case is, therefore, neither unnatural nor unexplained. It ought to have been appreciated that such delay was plausible, especially when weighed against the trauma, hesitation, and apprehension a minor victim may experience before speaking up.

11. The learned Sessions Court has also recorded in the impugned order that the first incident in the present case took place a ‘month’ prior to 26.02.2022, when the victim was passing by the shop of the accused and he had unzipped his pants and removed his underwear and exposed himself while making vulgar gestures. It appears that the learned Sessions Court did not see the records of the case since the child victim in her complaint had clearly stated that this incident had occurred about one week prior to the date of lodging the complaint. Thus, both the first incident (one week prior) and the second incident (4-5 days prior) fell within the same week before the FIR was lodged. The learned Sessions Court’s observation that the first incident was “one month back” is, therefore, factually incorrect and directly contrary to the record.

12. In addition, the impugned order records that “the co-ordinates



of time of commission of this alleged act are not provided by the victim.” This Court finds such an observation not only vague but also misplaced. A 10-year-old child cannot be expected to narrate incidents with precision. The victim did, in fact, provide a tentative time period and approximate dates for both incidents, which, at the stage of framing of charge, were sufficient for the matter to proceed to trial. Minor gaps or uncertainties in a minor child’s account are not uncommon and can be clarified at the time of recording of evidence during the trial.

13. It is also significant that in this case, the CCTV footage and the mobile phone allegedly used by the accused to record videos of the victim were seized and sent to the Forensic Science Laboratory (FSL). The learned Sessions Court also did not deem it appropriate to await the outcome of the FSL report, which could have provided further corroboration or clarity regarding the allegations against the accused and the material in support of the same.

14. The Hon’ble Supreme Court as well as this Court, time and again, has reiterated the considerations for framing of charge through its judgments. It is well-settled that at the stage of framing of charge, the Court is not required to meticulously evaluate the evidence or determine the likelihood of conviction. The settled legal position is that if the material placed on record, taken at its face value, discloses the commission of the offence alleged and raises a strong suspicion against the accused, charges ought to be framed. The Court is to refrain from conducting a roving enquiry into the merits or weighing



the defence of the accused at this preliminary stage.

15. The failure to appreciate the age of the victim, the nature of the allegations, the timelines as disclosed in her statements, has, in the present case, resulted in an order that is not only contrary to the material on record but also inconsistent with settled legal principles governing the framing of charge. The learned Sessions Court also overlooked that in cases involving sexual offences against a minor child, a sensitive and balanced approach is necessary, keeping in mind the psychological trauma suffered by such a victim.

16. In the considered view of this Court, the impugned order is perverse, and the discharge of the accused, in the face of specific allegations levelled by the minor victim cannot be sustained.

17. The impugned order dated 05.08.2023 is thus set aside.

18. Considering the allegations and material on record, the accused is found liable to be charged for commission of offences punishable under Sections 354D/354/509 of the IPC, i.e offence of (i) stalking, (ii) assault or criminal force to woman with intent to outrage her modesty, and (iii) word, gesture or act intended to insult the modesty of a woman. He is also found liable to be charged for commission of offences punishable under Sections 10/12 of the POCSO Act i.e. (i) punishment for aggravated sexual assault, and (ii) punishment for sexual harassment. In addition, this Court is also of the view that accused is liable to be charged for commission of offence punishable under Section 345A of IPC, i.e. sexual harassment, in view of the



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allegation that he had unzipped his pants, removed underwear and made obscene gestures towards the victim.

19. The learned Sessions Court is directed to frame charge against the accused, in terms of above observations, and proceed with the trial.

20. The petition is accordingly allowed and disposed of.

21. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

22. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 12, 2025/zp
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