

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

% Judgment delivered on: 15.09.2025

+ **CRL.A. 106/2020**

**AJAY @ BOBBY**

.....Appellant

versus

**STATE**

.....Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr. Sulaiman Mohd. Khan, Mr. Bhanu Malhotra, Mr. Gopeshwar Singh Chandel, Mr. Abdul Bari Khan, Mr. Aditya Chaudhary and Ms. Aditi Chaudhary, Advs

For the Respondent : Ms. Kiran Bairwa, APP for the State with SI Yogesh Kumar, PS K.M. Pur.

Mr. Arpit Batra, Adv. (Amicus Curiae)

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

**CRL.M.(BAIL) 157/2020 (for suspension of sentence)& CRL.M.A. 26853/2024 (application seeking disposal of CRL.M.(BAIL) 157/2020)**

1. The application, that is, CRL.M.(BAIL) 157/2020, is filed seeking suspension of the appellant's sentence in the present case.

2. It is the case of the prosecution that on 29.04.2013, FIR No. 105/2013 was registered at Police Station Kotla Mubarakpur on the statement of the victim alleging that at about 9:30AM, when other family members were not present at the house, the appellant (alleged



step father of the victim) had called her inside a room and bolted the door. On being asked about the same by the victim, the appellant started touching her forcefully. Allegedly, when the victim resisted and raised her voice, the appellant turned on the volume of the television, whereafter, the victim dealt a blow on the appellant's forehead with a brick. Despite the same, the appellant allegedly succeeded in raping the victim. The appellant allegedly also threatened the victim against disclosing about the incident to anyone and dropped her at the house of PW6/ Chena, in whose house the victim's mother was working as a maid. The victim disclosed about the incident to PW6, who then called the number 100 and informed the police.

3. As the victim's mother could not adduce any documents to establish the victim's date of birth, the age of the victim was determined through an ossification test, wherein her age was assessed to be between 16 to 17 years of age. As per the FSL report, the DNA generated from the male fraction DNA obtained from the vaginal smear as well as underwear of the victim matched with the DNA profile of the appellant.

4. By the judgment dated 03.12.2019 (hereafter '**impugned judgment**'), the learned Trial Court convicted the appellant for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**'). The learned Trial Court found that the defence had failed to cause any serious dent in the testimony of the victim and she had made consistent statements at various stages of the investigation. It was observed that there was nothing on record



to suggest that the victim was deposing falsely at the behest of her mother and the defence taken by the appellant was improbable. It was noted that the appellant had raised inconsistent pleas of defence and the medical report which reflected freshly torn hymen as well as the FSL report had corroborated the statement of the victim. The learned Trial Court found that even though the appellant was not the biological father of the victim, he was in a domestic relationship with the victim's mother and the penetrative sexual assault thus fell under Section 5(n) of the POCSO Act, which is punishable under Section 6 of the POCSO Act.

5. By the order on sentence dated 19.12.2019 (hereafter '**impugned order on sentence**'), the appellant was sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of ₹20,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of one year.

6. The learned counsel for the appellant submitted that the prosecution had failed to prove its case beyond reasonable doubt and the appellant has been falsely implicated in the present case. He submitted that the appellant was implicated merely because he had stopped giving money to the victim's mother and as he had refused to marry her.

7. He submitted that the entire case is concocted and the only material against the appellant is the statement of the victim, which is riddled with significant improvements and inconsistencies in the statements of the victim that were recorded under Sections 161 and



164 of the Code of Criminal Procedure, 1973 ('CrPC'), which shows that she had been tutored. He submitted that although the victim had stated in her statement under Section 161 of the CrPC that she was raped after she gave the blow with the brick, however, she later stated in her statement under Section 164 of the CrPC that she gave the blow prior to the commission of penetrative sexual assault.

8. He submitted that there was no external injury on the body of the victim and her clothes were also not found to be torn, as had been stated by her in her statement under Section 164 of the CrPC.

9. He submitted that there is no independent witness to corroborate the version of the prosecution and the learned Trial Court has failed to appreciate that child victims are prone to tutoring. He submits that the absence of independent witness, when the alleged incident took place in a jhuggi located in a populated area, casts serious doubt on the case of the prosecution.

10. He submitted that there has been delay in sending the samples to FSL and the same is not conclusive, due to which, it cannot be relied upon.

11. He submitted that as the victim had been assessed to be between sixteen to seventeen years of age, she ought to have been treated as an adult by applying the margin of error of two years.

12. He finally stressed that even if the conviction of the appellant is sustained, the sentence imposed on the appellant is excessive. He submitted that the incident took place in the year 2013, when the minimum sentence was 10 years for aggravated penetrative sexual



assault, and the appellant has been awarded a sentence of 20 years in the present case even though there were no aggravating circumstances.

13. He stressed that the appellant's sentence should be suspended and he ought to be released as he has already undergone 12 years in custody and he has to take care of his aged mother. He further submitted that the appellant belongs to the poor strata of society and he has maintained satisfactory conduct in jail.

14. The learned *amicus curiae* appearing for the victim submits that the case of the prosecution is aptly supported by credible scientific evidence and no *prima facie* case is made out in favour of the appellant so as to warrant suspension of the appellant's sentence.

15. I have heard the counsel and perused the record.

16. Before delving into the facts of the present case, it is imperative to discuss the law in relation to suspension of sentence. In the case of ***Omprakash Sahni v. Jai Shankar Chaudhary*:(2023) 6 SCC 123**, the Hon'ble Apex Court had succinctly summarised the law in relation to suspension of sentence and observed as under:

*“24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1)CrPC.*

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*30. In **Kishori Lal v. Rupa** [Kishori Lal v. Rupa, (2004) 7 SCC 638 : 2004 SCC (Cri) 2021], this Court has indicated the factors*



that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows : (SCC pp. 639-40, paras 4-6)

“4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. **There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond.** The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. **The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail.** In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. **What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.**”

31. In *Vijay Kumar v. Narendra* [*Vijay Kumar v. Narendra*, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and *Ramji Prasad v. Rattan Kumar Jaiswal* [*Ramji Prasad v. Rattan Kumar*



*Jaiswal, (2002) 9 SCC 366 : 2003 SCC (Cri) 1197], it was held by this Court that in cases involving conviction under Section 302IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted...*

*32. The aforesaid view is reiterated by this Court in Vasant Tukaram Pawar v. State of Maharashtra [Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281 : 2005 SCC (Cri) 1052] and Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160 : (2008) 1 SCC (Cri) 644].*

*33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.*

17. Thus, it is clear that at the time of considering an application for suspension of sentence, the Court is not required to reappreciate the evidence for rooting out lacunae or loopholes in a manner that would be fit for an appeal. This Court is required to exercise restraint and exercise its power to suspend the sentence in only exceptional cases when the offence involved is serious in nature. The test is to essentially make a *prima facie* assessment as to whether the conviction



is sustainable in law and to see if there are any such circumstances which warrant suspension of sentence.

18. In the present case, the allegations are undoubtedly grave in nature and it is the case of the prosecution that the appellant, who was the step father of the victim, had forcibly committed penetrative sexual assault upon the victim on 29.04.2013.

19. Multiple arguments have been raised by the appellant to impress upon this Court that his conviction is unsustainable in law.

20. Much emphasis has been laid on the inconsistencies in the evidence of the victim. It is pertinent to note that in the present case, there is overwhelming scientific evidence against the appellant. Although the same is sought to be rebutted on the pretext of it being inconclusive and there being a delay in sending samples to FSL, at this stage, *prima facie*, from a perusal of the record, this Court is not convinced that the conviction of the appellant is erroneous.

21. The age of the prosecutrix has also been disputed before this Court although it is recorded in the impugned judgment that the defence had not challenged the age of the victim before the learned Trial Court. This Court does not consider it apposite to address the belated argument in this regard at this juncture while considering the application for suspension of sentence considering that even if the case in relation to age of the prosecutrix is taken at the highest, the scientific evidence is *prima facie* sufficient to return a finding of guilty against the appellant for the offence of rape.

22. The counsel for the appellant has also addressed arguments on





the quantum of sentence and argued that the same is excessive in view of the minimum sentence that is prescribed under the statute. Multiple mitigating circumstances have also been put forth by the appellant, including the appellant belonging to the poor strata of society and him having his old widowed mother to take care of. A bare perusal of the impugned order on sentence shows that the only aggravating circumstance noted for awarding a sentence of twenty years is that the appellant was in a domestic relation with the victim's mother. The said reason is why the offence came to be categorized as aggravated penetrative sexual assault, and the same undisputedly carried a minimum sentence of ten years at the time of the incident. In such circumstances, in the opinion of this Court, the issue of sentence awarded to the appellant requires to be considered, especially in light of the mitigating circumstances as put forth by the appellant.

23. It is stated that the appellant has already spent more than twelve years in custody out of the total awarded sentence of twenty years. The Hon'ble Apex in the case of *Saudan Singh v. State of Uttar Pradesh* : 2021 SCC OnLine SC 3259 has observed that the convict undergoing 50 per cent of the actual sentence can be the basis of grant of bail.

24. Considering that the appellant has already undergone more than half of the sentence awarded to him and since the appeal is unlikely to be adjudicated expeditiously, this Court considers it apposite to suspend the impugned order on sentence till the pendency of the present appeal.



25. The appellant is directed to be released on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned Trial Court, on the following conditions:

- a. The appellant shall not contact the victim or any other witnesses associated with the case;
- b. The appellant shall furnish a proof of residence where he shall reside upon his release, which should be at least 5 KM far from the locality where the prosecutrix resides, subject to the satisfaction of the concerned IO/SHO. The appellant shall not change the address without informing the concerned IO/ SHO;
- c. The appellant shall, under no circumstances, leave the country without the permission of the Court;
- d. The appellant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. The appellant shall appear before this Court as and when directed.

26. The present applications are allowed in the aforesaid terms.

**AMIT MAHAJAN, J**

**SEPTEMBER 15, 2025**