



\$~67

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 534/2022**
DEEPAK Appellant

Through: Mr. Himanshu Anand Gupta, Adv.
DHCLSC and Mr. Ishwar Raj
Chandra, Adv. with appellant in
person.

versus

THE STATE (NCT OF DELHI) Respondent
Through: Ms. Kiran Bairwa, APP for State.
SI Rinku, P.S. Janakpuri and SI
Khiloni, Anti Corruption Branch.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **27.05.2024**

CRL.M.(BAIL) 912/2024

1. An application under Section 389 Cr.P.C. has been preferred on behalf of the appellant in FIR No. 954/2015, under Section 328/342/363/376D/ 506 IPC & Section 6 POCSO registered at PS: Janakpuri.
2. Issue notice. Learned APP for the State appears on advance notice and accepts notice.
3. Appellant stands convicted vide judgment dated 20.08.2022 and sentenced vide order dated 09.09.2022 to undergo:
 - (a) RI for 20 years and fine of Rs. 20,000/- for offence punishable under Section 6 of POCSO Act (in default of payment of fine, to undergo SI for one year);
 - (b) RI for 05 years and fine of Rs. 2,000/- for offence punishable under



Section 366 IPC (in default of payment of fine, to undergo SI for 06 months).

4. In brief, as per facts disclosed in the judgment, present FIR was registered on complaint of victim, a student of 8th standard, who alleged that on 01.08.2015, when she was about to enter her school after her father dropped her, she heard a whistle and saw that two boys were sitting in the car. One of them was Rohit whom she had come in contact through facebook and had also exchanged phone numbers. She accompanied Rohit in the car, since he showed her a bottle allegedly containing acid, but did not know the other person (appellant Deepak) accompanying him. Further she was taken by Rohit to a room in a factory in Khyala and appellant left. Thereafter prosecutrix became unconscious after a tablet was given to her by Rohit and later on, on regaining consciousness, she realised that she was not wearing any clothes except the underwear. After sometime, appellant also reached the spot and thereafter, all three of them returned back to school on a bike. On reaching the school, prosecutrix realised that school had already closed, wherein she met her father. However, she did not disclose the incident to anyone. The incident was finally disclosed by the prosecutrix to the school Counsellor, upon which her parents were called by the teacher and the FIR was accordingly registered on 03.08.2015 after gap of two days.

5. Learned counsel for the appellant prays for suspension of sentence and submits that on the face of record no role has been attributed to Deepak except for accompanying prosecutrix and co-convict Rohit to Khyala who were known to each other. He further submits that the appellant was not known to the prosecutrix but merely accompanied in the car. It is emphasized that the appellant allegedly left them in Khyala and was not even aware in case Rohit



and prosecutrix would be involved in physical relationship. Further prosecutrix and Rohit were friends and known to each other and he had no involvement in any manner. He further submits that there is no allegation that the appellant in any manner had instigated or participated in the alleged sexual act between Rohit and prosecutrix and also points out that there is a delay of about two days in registration of FIR. He submits that at the time of alleged commission of offence, appellant was merely aged about 22 years and the allegations against him primarily pertain to period prior to amendment of Section 6 of POCSO Act.

6. On the other hand, learned APP for the State opposes the application and submits that the car in which prosecutrix accompanied to place of incident was owned by Deepak and the identity of appellant is not disputed. She further urges that common intention is decipherable since he had accompanied Rohit and prosecutrix, though he is not involved in the alleged sexual relationship.

7. I have given considered thought to the contentions raised.

Admittedly, prosecutrix and Rohit were known to each other and appellant Deepak was a stranger. Prosecutrix appears to have voluntarily accompanied Rohit, though allegedly she stated that it was under threat of an acid attack, since no acid bottle was recovered or linked during the course of investigation. It also cannot be ignored that outside the school, there is a lot of activity at time of entry and the prosecutrix was dropped to school by her father. Further no complaint was made by prosecutrix regarding alleged apprehension perceived by her to the security guard stationed outside school or any other person. It has also been pointed out by learned counsel for the appellant that the brother of the prosecutrix, who was studying in the same



school, was also dropped by father of prosecutrix at the same time and the brother of the prosecutrix attended the school while she allegedly proceeded with Rohit on her own. The only role which allegedly has come on record against the appellant Deepak, is of accompanying his friend Rohit on the aforesaid date. Prosecutrix did not raise any alarm while proceeding to Khyala or returning back to school on a bike with accused.

8. Keeping in view the facts and circumstances and serious gaps in prosecution version which go to the root of the case, the learned trial court appears to have been swayed merely by the fact that appellant had accompanied the prosecutrix and Rohit. The sentence of the appellant is suspended during pendency of appeal and is admitted to bail on furnishing a personal bond in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one surety in the like amount to the satisfaction of the learned Trial Court and subject to following conditions:

- (i) Appellant shall provide his mobile number to the Investigating Officer (IO)/SHO concerned at the time of release and shall appear as and when directed by this Court.
- (ii) In case of change of address, appellant shall intimate/communicate his address to the IO/SHO concerned.

Application is accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.



CRL.A. 534/2022

Appeal be listed on 30.08.2024.

ANOOP KUMAR MENDIRATTA, J

MAY 27, 2024/akc