

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 349 of 2025****Reserved on: 25.5.2026****Date of Decision: 24.6.2026.**

Shankar**...Petitioner****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Petitioner : Mr Sudhir Bhatnagar,
Advocate.****For the Respondent/State : Mr Jitender Sharma,
Additional Advocate General.**

Rakesh Kainthla, Judge

The victim made a complaint that she was born on 28.09.1998. The accused is her distant cousin. He entered into sexual relations with the victim in November 2015. The accused also had sexual relations with her in June & July 2016. The victim became pregnant. She was brought to the hospital after she complained of pain in her stomach. She gave birth to a baby girl. The police registered the FIR, conducted the investigation and

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

filed a charge sheet against the petitioner for the commission of offences punishable under Section 376 of IPC and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'), 2015.

2. The victim appeared in the Court and made a statement in her cross-examination that the incident pertained to the year 2013. Her relations with the accused continued from 2013 till 2016.

3. The petitioner filed an application before the learned Trial Court asserting that he was born on 17.04.1998. As per the victim, the incident started in the year 2013 and continued thereafter. The accused was a juvenile at the time of the commission of the said offence. The Court was not competent to try the matter, hence it was prayed that the same be sent to the Juvenile Justice Board for adjudication.

4. The State filed a reply denying the contents of the petition; however, it was admitted that the victim admitted that sexual relations between the victim and the petitioner had continued since, 2013 as per the victim. It was asserted that, as per the FIR, the petitioner had assaulted the victim in July 2016

when the petitioner was more than 18 years of age. The victim was a minor at that time, and the petitioner was a major; therefore, he cannot be tried by the Juvenile Justice Board.

5. Learned Special Judge, Kullu held that the file was sent to the Juvenile Justice Board for conducting the inquiry as per Section 15 of the Juvenile Justice Care and Protection of Children Act, 2015. The Juvenile Justice Board held that the petitioner was able to understand the nature and consequences of his act; therefore, the case was transferred to the Children's Court in view of Section 18(3) of the Juvenile Justice Act. The offence was committed in the year 2015, as per the prosecution, and the matter is not triable by the Principal Magistrate, Juvenile Justice Board. Hence, the application was dismissed.

6. The petitioner filed a criminal revision before this Court, which was registered as Criminal Revision No. 96 of 2023 and was dismissed on 2.1.2024. The matter was carried to the Hon'ble Supreme Court of India, and the Hon'ble Supreme Court of India held in Special Leave to Appeal (Criminal) No.2786 of 2024 titled Shankar Vs. State of H.P. decided on 17.12.2024 that no interference was required with the order passed by the High

Court; the petitioner had suffered an order dated 4.12.2017 of the determination of his age passed by the Juvenile Justice Board, Kullu, H.P., which was not carried in appeal under Section 101 of the Juvenile Justice (Care and Protection of Children Act), 2015. Hence, the petitioner was permitted to file an appeal under Section 101 together with an application for condonation of delay. It was also made clear that if the Appellate Court was satisfied that sufficient cause prevented the petitioner from presenting the appeal, it may proceed to pass an order as per the law to condone the delay and hear the appeal on merits.

7. The petitioner filed the application under Section 5 of the Limitation Act for condonation of delay, asserting that the order was passed on 4.12.2017. The petitioner remained in judicial custody till 16.1.2018. He was released on bail and went to his house in a remote area of Lahaul & Spiti. The petitioner was not in a position to file an appeal because of his incarceration. A permission was granted to the petitioner to file an appeal. The delay has already been condoned by the Hon'ble Supreme Court of India. Hence, it was prayed that the appeal be heard on the merits.

8. The application was opposed by filing a reply.

9. The learned Appellate Court held that the appeal has to be preferred within 30 days, but the Court can condone the delay after being satisfied that any sufficient cause prevented the person from filing the appeal within time. The petitioner had regularly appeared before the Court. He never raised any plea of juvenility. Statements of ten witnesses were recorded, and when the matter was posted for recording the statement under Section 313 of the Code of Criminal Procedure (Cr.PC), a revision was filed before the High Court, which was dismissed. The Hon'ble Supreme Court had not condoned the delay but permitted the petitioner to file an appeal and satisfy the Court regarding the sufficient cause. No reason was assigned in the application except that the petitioner was in custody. Therefore, the application was dismissed.

10. Being aggrieved by the order passed by the learned Trial Court, the petitioner has filed the present revision, asserting that the learned Trial Court failed to appreciate the fact that the petitioner could not file the appeal because he was in judicial lock-up. The time for filing the appeal had expired at the time of his release. Learned Appellate Court had taken a hyper-technical view in dismissing the application and wrongly

held that the petitioner had failed to show sufficient cause. The petitioner is entitled to take the plea of juvenility at any time. Therefore, it was prayed that the present application be allowed and the order passed by the learned Appellate Court be set aside.

11. I have heard Mr Sudhir Bhatnagar, learned counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

12. Mr Sudhir Bhatnagar, learned counsel for the petitioner, submitted that the learned Appellate Court erred in dismissing the application for condonation of the delay. The applicant/petitioner was inside the Jail at the time of the passing of the order, and he could not assail the order within the prescribed period. The Hon'ble Supreme Court has already condoned the delay. The plea of juvenility can be raised at any time, and the learned Appellate Court failed to appreciate this aspect. Therefore, he prayed that the present revision be allowed and the order passed by the learned Appellate Court be set aside.

13. Mr Jitender Sharma, learned additional Advocate General for the respondent-State, submitted that the Hon'ble Supreme Court had not condoned the delay but permitted the petitioner to file an application for condonation of delay. It was

for the petitioner to satisfy the learned Appellate Court that he had sufficient cause which prevented him from filing the appeal within time. Since he has failed to show any sufficient cause, the learned Appellate Court was justified in dismissing the application. Hence, he prayed that the present petition be dismissed.

14. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

15. The petitioner had asserted in para-4 of the application that the Hon'ble Supreme Court had already condoned the delay and directed the petitioner to file an appeal. This was a misleading statement because the Hon'ble Supreme Court of India had specifically observed that the petitioner was permitted to file an appeal together with an application for condonation of delay. The learned Appellate Court was free to adjudicate whether sufficient cause was made out by the petitioner, which prevented him from presenting the appeal at an earlier point in time. Therefore, it was for the petitioner to show a sufficient cause for entertaining an appeal. Since the application failed to mention any sufficient cause that prevented

the petitioner from filing the appeal within time, the learned Appellate Court was justified in rejecting the application.

16. It was submitted that the petitioner was in custody at the time of the passing of the order, and he had sufficient cause for not filing the appeal. The Learned Appellate Court had rightly pointed out that the applicant was released on 16.1.2018, and he could have filed an appeal immediately after the release on bail, but he waited for seven years to file the appeal, for which no explanation at all was provided.

17. It was submitted that the plea of juvenility can be taken at any stage. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Juvenile in Conflict with Law Vs. State of Rajasthan, Petition for Special Leave to Appeal (Crl.) No. 12633/2023 decided on 8.1.2025*. There can be no dispute that the plea of juvenility can be taken at any stage. However, in the present case, the Juvenile Justice Board had found the petitioner to be a juvenile but capable of understanding the nature of the act and its consequences vide order dated 4.12.2017. Therefore, this judgment will not assist the petitioner.

18. Therefore, there is no infirmity in the order passed by the learned Appellate Court. Hence, the present petition fails and is dismissed.

19. The observations made herein-above shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the case.

20. A copy of this judgment, along with the records of the learned Courts below, be sent back forthwith.

21. Pending applications, if any, also stand disposed of.

22. The parties through their learned counsel are directed to appear before learned Special Judge, Kullu, H.P. on **14.7.2026.**

(Rakesh Kainthla)
Judge

24th June, 2026
(Chander)