

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CRA/3/2026
IA No. CRAN/1/2026, CRAN/2/2026

Shri. Kishov Ojha

Vs

The State and another

Mr. Siddhartha Singha ... for the appellant

Mr. Sumit Kumar Karmakar ... for the State

April 24, 2026
[SR]
Item No.5

Re: CRAN/1/2026

1. The reason for the delay in filing the appeal, as explained in CRAN/1/2026, is that the petitioner was behind the bar and only when he attended a Joint Clinic Programme organized by the Andaman and Nicobar District Legal Services Authority (DLSA), the learned Advocate of the DLSA informed the convicts about their rights, upon which the appellant chose to exercise such right by preferring an appeal. The subsequent time was consumed in taking out certified copies and preparing the appeal.

2. Upon hearing learned counsel, we are convinced that sufficient explanation for the delay has been made out.

3. Accordingly, CRAN/1/2026 is allowed on contest, thereby condoning the delay in preferring the appeal

Re: CRA/3/2026

4. The appeal is admitted and will be heard on the grounds taken in the memorandum of appeal.
5. Issue formal notices.
6. Trial Court Records be called for.
7. Let the requisite number of paper books be prepared by the Department within a period of four weeks after arrival of the Trial Court Records.
8. Liberty to mention the appeal for enlistment as and when the same is ready for hearing.

Re:CRAN/2/2026

9. Heard learned counsel for the parties on the application for suspension of sentence.
10. Learned counsel for the appellant/petitioner submits that the appellant is already in custody for three years and six months.
11. Although presumption was raised against the appellant under Section 9 of the Protection of Children from Sexual Offences Act, 2012, it is contended that the foundational facts to establish such presumption are absent in the present case. It is submitted that the principal component of the charge, being the CFSL report, disclosed that the examination did not suggest performance of recent sexual act (no bodily genital injuries + presence of smegma + absence of

vaginal/female bodily cells). Thus, it is argued that there was no proof connecting the appellant to the offence at all.

12. Learned counsel also seeks to point out that there were several discrepancies in the evidence of the supposed eye-witness.

13. Learned counsel takes us through paragraph nos. 10.8 and 10.9 of the impugned judgement, from where it transpires that the CFSL report neither disclosed any genital or physical injuries present, suggestive of use of force, nor could human semen be detected on Exhibit 10 A (oral swab) and 10 B (dental floss).

14. Thus, it is submitted that the conviction was based entirely on conjecture and without any evidence.

15. It is further argued on behalf of the appellant that the Doctor stated in his evidence that there were no traces of saliva in the underwear of the appellant, thus suggesting that there was no instance of sexual act by the appellant at all.

16. Furthermore, it is argued that the statement under Section 164, Criminal Procedure Code was not exhibited, nor was there any independent witness.

17. Learned counsel next contends that due to the gross discrepancies in the evidence of the eye-witness, there is sufficient doubt as to whether the presumption under Section 9 could be raised against the appellant at all.

18. Learned Public Prosecutor seriously opposes the prayer for suspension of sentence and contends that in the facts of

the case, which were elaborately discussed by the learned Trial Judge, there is no scope of there being any doubt regarding the factual premise connecting the appellant to the crime.

19. Learned Public Prosecutor points out that the learned Trial Judge took into consideration the fact the medical examination took place after 6-7 hours of the incident and as such, keeping in view the region where the alleged penetration took place, i.e. the mouth of the victim girl, it might very well have been that no trace of semen was found at the relevant juncture.

20. It is further argued that the Court ought to consider the tender age of the victim at the time of the offence, being about a little more than four years of age, and the gravity of the crime.

21. Accordingly, it is contended that the prayer for suspension of sentence ought to be turned down.

22. Upon carefully perusing the relevant portions of the impugned judgment of conviction and the copy of the CFSL report handed over by learned counsel for the appellant for our perusal, we do not find any patent illegality or gross irregularity in the impugned judgement sufficient to mitigate the rigours of the conviction.

23. Insofar as the absence of any vaginal/female bodily parts and/or traces of semen is concerned, there was little or no scope of the same, since the medical examination of the

victim girl took place 6 to 7 hours of the incident and taking into consideration the region of the alleged penetration i.e. the mouth of the victim girl, it might very well have been that all traces, even if any at the time of the offence, had dissipated by the time the victim girl was examined.

24. Secondly, to constitute the offences as alleged and on which the appellant has been convicted, overt sexual activity or ejaculation is not a prerequisite. It would be sufficient if penetration in the mouth was proved by the evidence on record. In the present case, we further take note of the fact that the victim girl was of very tender age, being just above four years at the time of the offence, and the possibility of any evidence of use of force or resistance on the part of the victim girl can easily be ruled out, since a four year-old minor girl could not even have been capable of raising any resistance worth the name and would, in any event, be traumatized into submission.

25. Insofar as the submission of the appellant that there was presence of smegma is concerned, the same does not inspire confidence in us to hold that the conviction was based on surmise, since, as we discussed earlier, it is not necessary that the act of ejaculation or sexual activity was necessary for proving the nature of the crime alleged against the appellant.

26. The discrepancies sought to be pointed out in the evidence of the eye-witness were of a minor nature and it is

well-settled that the truth of the evidence cannot be shaken merely due to marginal discrepancies; rather, a truthful witness would be more prone to commit certain minor errors at the time of narration of her version.

27. The Court is not unmindful of the fact that the appellant is already in custody for more than three years. However, the considerations in a post-conviction application for suspension of sentence are much stricter than in a pre-conviction prayer for bail.

28. In the opinion of the Court, the appellant has failed to cross the hurdle of such strict standards and we are of the opinion that the appellant is not entitled to be enlarged by a suspension of his sentence, more so keeping in view of the fact that the victim girl was a minor of tender years at the time of the offence and the gravity of the offence was too high for us to grant such relief to the appellant.

29. Accordingly, CRAN/2/2026 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Smita Das De, J.)