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

Date of order: 20.05.2026

+ CRL.A. 236/2021 & CRL.M.A. 15584/2026

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Aman Usman, APP with
Mr. Manvendra Yadav, Mr.
Atiq Ur Rehman, Advocates
along with SI Sandeep Bishnoi,
PS Mayapuri

versus

DEEPAK

.....Respondent

Through: Mr. Dinesh Malik, Mr. Puneet
Jain, Mr. Lavish Arora,
Advocates with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

RAVINDER DUDEJA, J. (ORAL)

1. *Vide* our judgment dated 04th May, 2026, the present appeal was allowed and the impugned judgment dated 18th December, 2019, passed by the learned Trial Court, has been set aside and respondent Deepak has been convicted for the offences punishable under Section 363/366/342 of the Indian Penal Code 1860 [**“IPC”**] and Section 6 of the Protection of Children from Sexual Offences Act, 2012 [**“POCSO Act”**].

2. We have heard the learned counsel for the respondent/convict and the learned Additional PP on the point of quantum of sentence as



also on an application under Section 4 of Probation of Offenders Act, 1958, seeking release on probation of good conduct.

3. The learned counsel for respondent/convict submits that the age of the convict was 21 years at the time of commission of offence. It is further submitted that the convict is the sole bread-earner of his family, and his incarceration at this stage, would not only adversely affect his future prospects but would also cause immense economic hardship to his 72-year old mother, who is suffering from age-related ailments. It is further submitted that the convict is presently working as a daily wage worker at a flex shop and earns approximately Rs. 8,000/- to Rs. 10,000/- per month.

4. The learned counsel further submits that the incident pertains to the year 2014 and that victim as also the convict are now settled in their respective lives. It is also submitted that respondent/convict is a first time offender, with no prior criminal antecedents. Request has therefore been made for taking a lenient view and for release of the convict on probation of good conduct. In support, he places reliance on the judgement of the Supreme Court in **Sunita Devi v. The State of Bihar**, 2024 INSC 448.

5. *Per contra*, the learned APP for the State submits that since Section 6 of POCSO Act provides for a minimum sentence of 10 years imprisonment, the benefit under Probation of Offenders Act cannot be given, and in support of his submission, he places reliance on the judgment of the Karnataka High Court in the case of **State of Karnataka v. Prathap & Anr.** CRL. APPEAL 1335/2017. The learned APP further submits that the POCSO Act came into force w.e.f. 14th



November, 2012, that is, subsequent to the coming into force of the Probation of Offender Act, and therefore, Probation of Offenders Act is not applicable in the present case.

6. He further submits that even Section 6 of the Probation of Offenders Act would not apply in the present case, as on the date of punishment, the age of the respondent admittedly is more than 21 years.

7. The learned APP further submits that Section 6 of the POCSO Act provides for punishment with imprisonment upto life, and therefore, this is not a fit case for grant of probation and respondent does not deserve any leniency.

8. We have considered the submissions made by the learned counsels for the parties.

9. Section 6 of the POCSO Act, as applicable at the relevant time, provided punishment of Rigorous Imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life and shall also be liable to fine.

10. The Probation of Offenders Act, 1958, empowers the Courts to release an offender after admonition in respect of certain specified offences. It also empowers the Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of the offenders under 21 years of age, special provision has been made putting restriction on their imprisonment. However, before granting benefit of Probation of Offenders Act, it must be shown that the convict, even though, less than 21 years of age, was not guilty of



an offence punishable with imprisonment for life. This has been made clear by the Supreme Court in the case of **Jugal Kishore Prasad Vs. State of Bihar**, (1972) 2 SCC 633. The relevant para reads as under:-

“7. Mr Misra on behalf of the appellant has urged that as the offence under Section 326 read with Section 149, Penal Code, 1860 is punishable not only with imprisonment for life but also with imprisonment which may extend up to ten years, the benefit of Section 6 of the Act can be invoked by the appellant. This contention, in our opinion, is not well founded. Plain reading of Section 6 makes it manifest that it deals with persons under twenty-one years of age who are found guilty of having committed an offence punishable with imprisonment but not with imprisonment for life. As imprisonment for life can also be awarded for the offence under Section 326 read with Section 149, Penal Code, 1860, a person found guilty of such an offence would not be entitled to claim the benefit of Section 6. To hold otherwise, would have the effect of ignoring the words “but not with imprisonment for life” and treating them to be otiose. Such a construction is plainly not permissible. We also cannot subscribe to the view that the offences excluded from the purview of the section are only those offences wherein punishment prescribed is imprisonment for life and not for a lesser term, for the language used in the section does not warrant such a view. On the contrary, the plain meaning of the section is that the section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life. The policy underlying the Act appears to be that it is only in cases of not very serious nature viz. offences not



punishable with imprisonment for life that the convicted person should have the benefit of provisions of the Act. Where, however, the offence for which a person has been convicted is of a serious nature punishable with imprisonment for life, the benefit of the Act would not be permissible in his case. Likewise, there are certain offences like those under the Prevention of Corruption Act wherein the convicted person cannot claim the protection of the Act. Section 18 of the Act expressly excludes such offences from the purview of the Act.”

11. Even otherwise, Section 6 of the Probation of Offenders Act applies to the accused, who is under 21 years of age on the date of imposition of punishment and not on the date of commission of offence. If on the date of order of conviction and sentence, the accused is below 21 years of age, only then, the provisions of Section 6 of the Act shall apply. In taking this view, we are supported by the judgment of the Supreme Court in the case of **Sudesh Kumar v. State of Uttarakhand** (2008) 3 SCC 111.

12. Admittedly, on the date of conviction, that is, 04th May, 2026, the age of the respondent was more than 21 years, and therefore, respondent is not entitled to the benefit of Section 6 of the Probation of Offenders Act.

13. In the case of **State State of Karnataka v. Prathap & Anr.** (supra), the High Court of Karnataka held that the provisions of Probation of Offenders Act do not have any application in the case under POCSO Act. The relevant paras of the judgment read as under:-



“Prevention of Children from Sexual Offences Act, 2012 is a special enactment which came into force w.e.f. 20.06.2012. This enactment is subsequent to coming into force of the Probation of Offenders Act. In the case on hand the accused is liable to be punished according to section 8 of POCSO Act which prescribes a minimum sentence of 3 years imprisonment in addition to fine.

Therefore, the minimum punishment has to be imposed. The provisions of the Probation of Offenders Act do not have application.”

14. The POCSO Act was enacted to provide for protection of children from the offences of sexual assault, sexual harassment and pornography. Section 6 of the POCSO Act at the relevant time provided minimum punishment for 10 years, which may extend to imprisonment for life with fine. Keeping in mind the objective behind the enactment as also the punishment, we are of the view that respondent is not entitled for grant of probation under Section 4 and 6 of Probation of Offenders Act, 1958. **CRI. M.A. 15584/2026 is therefore dismissed.**

15. As per the Nominal Roll dated 06.05.2026, the respondent has already remained in custody for about 05 years and 07 months during the investigation/trial of the case. The Nominal Roll does not indicate any previous criminal antecedents of the respondent. The incident took place in the year 2014. Taking into account all the facts and circumstances, in particular, the mitigating circumstances pointed out by the learned counsel of the respondent, we are of the view that interest of justice would be met if the minimum sentence is imposed



on the Respondent/convict. The respondent/convict is accordingly sentenced as under:-

- i) Rigorous Imprisonment for 10 years with fine of Rs. 10,000/-, in default of payment of fine, he shall undergo Simple Imprisonment for a period of 03 months under Section 6 of the POCSO Act;
- ii) Rigorous Imprisonment for a period of 07 years with fine of Rs. 10,000/-, in default of payment of fine, he shall undergo Simple Imprisonment for a period of 03 months under Section 366 IPC;
- iii) Rigorous Imprisonment of a period of 03 years with a fine of Rs. 5,000/-, in default of payment of fine, he shall undergo Simple Imprisonment for a period of 01 month under Section 363 IPC;
- iv) Rigorous Imprisonment of 3 months under Section 342 IPC.

16. All sentences shall run concurrently and respondent/convict shall get benefit of Section 428 Cr. PC for the period during which he remained in custody during investigation/trial.

Compensation:

17. Under Section 33(8) of the POCSO Act, 2012 and Section 396 BNSS (Section 357 in Cr. PC), it is the duty of the Court to ensure that the victim receives adequate compensation for the physical and mental trauma caused to her and for her rehabilitation. As per the Compensation Scheme for Women Victims/Survivors of Sexual



Assault/Other Crimes, 2018, the maximum amount of compensation to be granted to the victim of rape is Rs. 07 lakhs. However, in case the victim is less than 18 years, then the compensation may be increased by 50% more than the specified amount.

18. Even though, the emotional harm cannot be quantified in terms of money, however, having considered the gravity of the offence, the age of the victim and the severity of emotional harm suffered by her, the child victim “S” is granted compensation of Rs. 10.50 lakhs (Rs. 07 lakhs + 50% of Rs. 07 lakhs) for the offence of aggravated penetrative sexual assault/rape committed upon her. The amount, if any already disbursed, be set off from the final compensation amount.

19. Let, a copy of this order be sent to the Member, Secretary, DSLSA for information and compliance.

20. Respondent/convict be taken into custody and be sent to prison to serve the remaining sentence.

21. Copy of this order as also the judgment dated 04th May, 2026 be supplied to the respondent/convict, victim and the learned APP free of cost.

22. Deputy Registrar is directed to prepare the custody warrant & commit the convict to prison.

23. The Appeal accordingly stands disposed of.

RAVINDER DUDEJA, J

NAVIN CHAWLA, J

MAY 20, 2026/na/rm