CRM-48642-2024 in
CRA-S-3761-2024

Reserved on : 29.10.2025

DINESH KUMAR VS STATE OF U.T. CHANDIGARH

Argued by : Mr. S.S. Behl, Senior Advocate assisted by
Mr. Jagpreet Singh, Advocate,
Ms. Raageshwari Sharma, Advocate,
Mr. Jugraj Singh, Advocate and
Mr. Himanshu Rajput, Advocate
for the applicant/appellant.

Mr. Shubham Mangla, A.P.P., U.T., Chandigarh.

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1. Prayer in the instant application under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023 is for suspension of sentence of the applicant/appellant-Dinesh Kumar during the pendency of the main appeal.

2. Vide judgment of conviction and order of sentence dated 07.11.2024/08.11.2024, passed by the learned Judge, Fast Track Special Court, Rape & POCSO Cases, Chandigarh in case FIR No.176 dated 02.11.2022 registered under Sections 354-A of Indian Penal Code, 1860 and Sections 10 & 12 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sector-39, Chandigarh, the applicant-appellant was convicted and sentenced as under:-

Under Section	**Punishment**
354-A of IPC	Rigorous imprisonment for 03 years and to pay fine of Rs.10,000/- and in case of default of payment of fine to further undergo simple imprisonment for 03 months.
10 of POCSO Act	Rigorous imprisonment for 05 years and to pay fine of Rs.30,000/- and in case of default of payment of fine to further undergo simple imprisonment for 06 months.

12 of POCSO Act	Rigorous imprisonment for 03 years and to pay fine of Rs.10,000/- and in case of default of payment of fine to further undergo simple imprisonment for 03 months.
All the sentences shall run concurrently.	

3. The appeal stands admitted by this Court, vide order dated 19.11.2024.

4. As per the prosecution, on 02.11.2022, the victim, who is aged about 12 years, made a statement before the police that she is studying in 7th Class at Government Model Senior Secondary School, Sector 37-D, Chandigarh. Today, in the morning, she received a message from a student that Dinesh Sir (the present applicant/appellant) is calling her and when she went to meet him, the applicant/appellant started some obscene talks with her and touched her inappropriately. Out of fear, she left the class immediately and due to shame, did not tell anything to anyone. After arriving home, she narrated the entire incident to her father.

5. Learned Senior Counsel for the applicant/appellant has argued that that the applicant/appellant is innocent and has been falsely implicated in the case. He has submitted that no such incident as alleged by the victim has ever happened. He has further submitted that the entire prosecution case is the result of a personal grudge harboured by the prosecutrix against the applicant/appellant. It is contended that about one month prior to the alleged incident, the applicant/appellant had seen the prosecutrix in a compromising position with a boy and had reprimanded her for the same. He further submits that the prosecutrix

was in the habit of bringing a mobile phone to the school premises and making video reels in the classroom, for which she was also admonished by the applicant/appellant. Therefore, the present case has been falsely instituted by the prosecutrix out of animosity and a sense of vendetta against the applicant/appellant. In fact, on the alleged date of incident, the applicant/appellant had only called the victim to the Staff Room to question her regarding use of mobile phone during school hours and he instructed her to bring her parents and the phone on the next day for Parents Teacher Meeting. He has further contended that it is very strange that on the very next day of the alleged incident i.e. on 03.11.2022, the victim attended the Parents Teacher Meeting along with her parents and clicked photographs in School and posted the same on the social media with the caption "School Mein Maje" and, therefore, such conduct of the victim, after alleged incident clearly indicates her personal annoyance or immaturity. He has further submitted that the Trial Court has convicted and sentenced the applicant/appellant solely on the basis of statement of the prosecutrix and except that the prosecution has failed to produce any material/documentary evidence against him. He has also submitted that the impugned judgment of conviction and order of sentence are liable to be set aside on the grounds taken in the appeal which is not likely to be heard in the near future. He has further submitted that out of the total sentence of 05 years, the applicant/appellant has already undergone the custody of more than 01 year and 03 months. No other case is pending against the applicant/appellant. Thus, it is prayed that the sentence of the

applicant/appellant may be ordered to be suspended during the pendency of the instant appeal.

6. Learned Additional Public Prosecutor has vehemently opposed the prayer for suspending the sentence of the applicant/appellant on the ground that the allegations against the applicant/appellant are serious in nature and he has rightly been convicted and sentenced by the Trial Court. He has filed the custody certificate dated 28.10.2025, which is taken on record, as per which, out of total awarded sentence of 05 years, the applicant/appellant has undergone actual custody period of 01 year, 03 months and 07 days (including custody period as undertrial). As per the custody certificate, the applicant/appellant is not involved in any other case.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. The object of Section 430 of B.N.S.S. (Section 389 of Cr.P.C.) is to ensure that a person who has been convicted by the Trial Court but has appealed against the conviction, is not subjected to unnecessary incarceration until Appellate Court decides the appeal. The Section seeks to strike a balance between the interest of justice and the personal liberty of the convicted person.

9. In the present case, it has been contended by the learned counsel for the applicant/appellant that the entire prosecution case has been concocted at the instance of the prosecutrix owing to a personal grudge against the applicant/appellant. The applicant/appellant is a Sanskrit teacher in the school and he being a teacher, in order to

discharge his professional and ethical duty had called the prosecutrix in the staffroom along with her mobile phone as she used to carry her mobile phone in the school for making video reels in the classroom and for which she was also admonished by the applicant/appellant. Due to the aforesaid incident, the prosecutrix developed animosity towards the applicant/appellant and, in order to settle scores, has falsely implicated him in the present case.

10. In support of version of the applicant/appellant, PW-7 Ajay Kumar, another teacher from the same school, vide deposition dated 31.01.2023, has deposed before the Trial Court that on 02.11.2022 he was taking combined class of 7thA and 7thB from 8:20 A.M. to 8:40 A.M. Meanwhile, one girl had come in the class and conveyed that Dinesh Sir (the present applicant/appellant) is calling the victim along with her mobile phone in the Staff Room. Subsequently, she went to Staff Room and returned back in the class within 2-3 minutes. PW-7 had not noticed any abnormal behaviour of the victim when she returned back. Even he did not notice any inconsistency in the behaviour of the victim during the 5th period taken by him after lunch break.

11. The applicant/appellant has also examined two eye-witnesses of the incident i.e. DW-2 Sudhakar Singh and DW-3 Ms. Anita. DW-2 Sudhakar Singh, T.G.T. teacher in the same school, vide deposition dated 10.01.2024, has deposed before the Trial Court that in his presence the victim along with one boy namely Prince came to the Staff Room to meet the applicant/appellant. When the

applicant/appellant had asked the victim about her mobile phone, she disclosed that she did not bring it today and the applicant/appellant asked her to attend the P.T.M. positively along with her parents and also to bring her mobile phone. Thereafter, both the students were sent back to their class. Similarly, DW-3 Ms. Anita (Mid Day Meal Worker), vide deposition dated 14.05.2024, has deposed that on the date of incident, she was present in the Staff Room from around 8:00 A.M. to 8:45 A.M. Two students came to meet the applicant/appellant to whom the applicant/appellant instructed to attend the P.T.M. next day positively along with their parents and also to bring their mobile phones. Thereafter, both the student left. However, the learned Trial Court has not given much weightage to the statements of DW-2 Sudhakar Singh and DW-3 Ms. Anita and convicted and sentenced the applicant/appellant solely on the basis of statement of the prosecutrix. Moreover, any child who would have experienced such an incident must have been mentally traumatised for a while, whereas, on 03.11.2022 the very next day of the alleged incident, the victim had attended the P.T.M. along with her parents and she also clicked some photographs in the school and uploaded the same on social media through her Instagram account with the caption "School Mein Maje". Such behaviour cannot reasonably be anticipated from a minor, who was subjected to sexual molestation by her teacher at school merely a day prior. The conduct and demeanour of the prosecutrix subsequent to the alleged incident does not inspire confidence in the prosecution version and the behaviour of the prosecutrix on 03.11.2022, exhibits no sign of fear, trauma and

emotional distress that would ordinarily be expected from a victim of such a grave offence. The mental state of the victim remained absolutely normal even after the alleged occurrence, which casts a serious doubt on the veracity of her allegations and strongly indicates that the incident, as narrated by the prosecutrix did not take place in the manner alleged.

12. Furthermore, the instant case is not supported by any medical or scientific evidence in as much as the medical examination of the victim was conducted on 03.11.2022, whereas the FIR had been registered on 02.11.2022 i.e. prior to the medical examination. Moreover, the medical record reflects that the victim had changed her clothes prior to the said examination conducted on 03.11.2022, which fact may have a bearing on the evidentiary value of the medical findings.

13. Therefore, keeping in view the abovesaid depositions and also the facts that there are arguable points involved in the appeal, which are not likely to be heard in the near future; out of total awarded sentence of 05 years, the applicant/appellant has undergone actual custody period of 01 year, 03 months and 07 days (including custody period as undertrial) and the applicant/appellant is not involved in any other case but without commenting on merits in any manner, this Court deem it appropriate to suspend the sentence of applicant/appellant-Dinesh Kumar during the pendency of the appeal.

14. Accordingly, the instant application is allowed and the remaining sentence of applicant/appellant-Dinesh Kumar is suspended during the pendency of the appeal. Applicant/appellant-Dinesh Kumar is

ordered to be released on bail subject to his furnishing personal and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

(NAMIT KUMAR)
JUDGE

Pronounced on : 07.11.2025
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