

## Rakesh @ Diwan vs State (Gnct Of Delhi) on 23 September, 2020

**Author: Anu Malhotra**

**Bench: Anu Malhotra**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. A. 454/2020 CRL.M.(BAIL) 8052/2020 CRL.M.A. 13137/2020  
& 13138/2020

RAKESH @ DIWAN

Through:

..... Petitioner

Mr.Sulaiman Mohd. Khan, Advocate

versus

STATE (GNCT OF DELHI)

Through:

..... Respondents

Ms.Meenakshi Dahiya, APP for Sta  
with SI Manoj.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA  
ORDER

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23.09.2020

(Hearing through Video Conferencing)

Crl.M.A. No. 13138/2020

This is an application filed on behalf of the appellant seeking condonation of delay of 183 days in filing the appeal, submitting to the effect that the appeal could be filed only after the interaction of the appellant with the jail visiting counsel and the same took time to prepare the appeal.

There is no opposition on behalf of the State.

In the interest of justice, the application is allowed and the delay of 183 days in filing the appeal is condoned.

The application is disposed of.

Exemption allowed, subject to just exceptions. Crl.A. 454/2020 and Crl.M.(B) No.8052/2020 The appellant vide the present appeal seeks to assail the impugned judgment dated 19.12.2019 and the impugned order on sentence dated 18.1.2020 of the learned Additional Sessions Judge-07 (POCSO) (Spl.Judge) (South-East) Saket Courts in Case No. 2065/2016 in relation to FIR No. 513/2013 Police Station Okhla, under Section 6 of the POCSO Act whereby the appellant having been convicted for the commission of offence punishable under Section 6 of the POCSO Act in relation to a penetrative sexual assault on a 3 1/2 year old child was sentenced to rigorous imprisonment for a period of 14 years and to pay a fine of Rs. 10,000/- and in default of payment of the said fine to further undergo simple imprisonment for a period of six months with the benefit of Section 428 Cr.P.C. having been

granted. Through the appeal it is indicated that in terms of the said order of sentence the fine has not been paid. This being the first appeal admitted for hearing in terms of Section 357(2) of the Cr.P.C., 1973, the deposit of the fine during the pendency of the appeal is kept in abeyance.

Along with the appeal is Crl.M.(Bail) 8052/2020 filed on behalf of the appellant seeking suspension of the sentence during the pendency of the appeal issued to the State is accepted on behalf of the State.

Learned counsel for the appellant submits that there are material contradictions and improvements in the testimonies of the prosecution witnesses and that there are several infirmities and that the applicant be released on bail.

Without any observations on the merits or demerits of the appeal which is yet to be heard on a perusal of the impugned judgment and the impugned order on sentence with the conviction of the appellant for stated penetrative assault on a child aged 3 1/2 years, there is no ground for suspension of sentence during the pendency of the appeal.

The Crl.M.(Bail) No. 8052/2020 is thus declined. Notice of the appeal is issued to the State.

Taking into account the spirit of the POCSO Act, 2012, it is considered appropriate that an expeditious hearing is granted in the matter. In view thereof, the appeal is set for final hearing on 4.11.2020. Notice of the appeal be served to the prosecutrix through the Investigating Officer to appear in person or through her authorized representative for the next date of hearing.

The Trial Court Record both in the e form and the physical form be requisitioned.

Written synopsis not exceeding five pages be submitted on behalf of either side with the copies thereof being exchanged inter se.

ANU MALHOTRA, J SEPTEMBER 23, 2020/SV