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ORDER RESERVED ON	ORDER PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL FULL PRONOUNCED	Uploaded on
20.01.2026	05.02.2026		06.02.2026
Present: Ms. Anju Rani, Advocate for the applicant-appellant.			
Ms. Pooja Nayar Sharma, DAG, Punjab.			
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FIR No.	Dated	Police Station	Sections
47	20.03.2023	Sadar Samana	363/366 IPC and 4 of POCSO Act

Criminal Case Number in the Trial Court	SC Case No.261-2023 CNR No. PBPT01-009872-2023
Date of Decision	07.08.2025

Convict's name	Penal provision	Sentence
Child in conflict with the law XXX	363, 366 r/w 120B IPC, 4(2) of POCSO Act	Substantive sentence: RI for 20 years

1. The applicant/convict, incarcerated for the last six months in the above-mentioned case, and was a minor at the time of the commission of the alleged rape on a girl who was also a minor, has come up before this Court second time under Section 430 BNSS 2023, seeking suspension of sentence.
2. The Applicant's counsel submits that the Applicant would have no objection whatsoever to any stringent conditions that this Court may impose, including that he shall stay away from the victim.
3. State's Counsel opposes the suspension of sentence.
4. We have heard counsel for the parties and analyzed the application for suspension and the impugned judgment for the limited purpose of adjudicating the present application. It shall be relevant to cull out the following information:

Date of Incident	Feb, 2023
Victim Medically Examined on	March 20, 2023
Victim's age on the date of the incident	13 years and 10 months (Approx)
Age of the Accused on the date of the incident	17 years 05 months (Approx)
<b>Age gap between the Victim and the Accused</b>	<b>4 years</b>
Convict's marital status at the time of the incident	Unmarried
Convict's current marital status	Unmarried
Victim's current marital status	Not Known

5. The applicant was a child in conflict with law, being under 18 years of age however was tried as an adult before the Sessions court, Patiala, which convicted him for offence

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punishable under §§363, 366, 120B IPC as well as §4 of POCSO Act, along with another co-accused namely Sachin Sharma, who was convicted for conspiracy and was sentenced to 5 years, whereas the applicant was sentenced to imprisonment for 20 years under §4(2) of POCSO Act.

6. The primary reason for which the applicant seeks suspension is parity with co-accused Sachin Sharma, to whom a Coordinate Bench of this Court had granted suspension of sentence vide order dated Dec 04, 2025, passed in CRM-40518-2025. However, the perusal of the order shows that the maximum sentence awarded to Sachin Sharma was 05 years. In contrast, the sentence awarded to the present applicant-child in conflict with law under §4(2) of the POCSO Act is 20 years. Thus, on the face of it, the applicant is not entitled to suspension of sentence on the grounds of parity.

7. The applicant also seeks suspension on merits. It shall be appropriate to refer to paragraph 32 of the impugned judgment dated Aug 07, 2025, as per which, when PW4 Dr. Jaspreet Kaur had medically examined the victim, she noticed that the hymen was not intact, but no fresh bleeding, swelling, redness, or ooze was present. However, on oath, the victim, PW1, stated that the coitus had taken place in February 2023; as such, the medical examination is hardly of any consequence.

8. Section 29 of the POCSO Act raises the presumption for offences under §§ 3,5,7,9 of the POCSO Act, unless the contrary is proved. A reference to the Special Court's judgment does not refer to a rebuttal of such presumption.

9. There are certain contradictions, issues with credibility, and also a delay in reporting; however, all aspects need a detailed analysis at the time of the final hearing of the appeal.

10. The question before this court is that when the coitus itself amounts to statutory rape under the POCSO Act, and the judgment prima facie does not totally discredit the prosecution, then why should this Court suspend the sentence?

11. Given the above, we are suspending the applicant's sentence because of the following reasons:

12. First, the FIR in the present case is dated in the second half of March 2023, the alleged coitus was in February 2023. Though according to the victim, the coitus had taken place between them back in February 2023 but it was not reported by the victim at that time. She chose not to report until her maternal uncle noticed the victim going with the applicant and the co-accused. After that, they dropped off the victim near her house, and there are allegations of some ruckus. It means that if the victim's uncle had not spotted her along with the applicant, then in all probabilities no complaint would have been made to the police. FIR was registered much later in March, after the accused and

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the girl were caught together by her Maternal Uncle.

13. Secondly, but primarily the accused was also a child<sup>1</sup> being a minor for all purposes except for the definition §2(33)<sup>2,3</sup> and §15<sup>4</sup> of the Juvenile Justice (Care and Protection of Children) Act, 2015.

14. Thirdly, an analysis of the allegations indicates that the coitus, if any, was consensual; there is no allegation of him being cruel while doing the act, the absence of injuries on the victim, are circumstances which all need to be appreciated by analyzing the evidence in great detail. However, the fundamental legal obstacle for the boy is that the girl cannot consent to sexual intercourse unless she is aged eighteen, and even if she gives her consent to have sex, it shall amount to statutory rape as defined in §63 of BNS, 2023 and §§3 and/or 5 of POCSO Act, 2012. Probably, neither the boy nor the girl would be aware of the Sovereign's restrictions before they could go intimate. Thus, when caught in the statutory juggernaut enacted by the elected representatives, the age gap between the boy and the girl becomes a significant factor that the legislature did not address. Thus, when the age gap between the boy and the girl is little, and all other tell-tale signs of coitus point towards consent, the gigantic scale of Justice would sway to strike a balance between the statutes and the ground realities.

15. Fourthly, the applicant is a first offender and has undertaken through Counsel not to cause any harm to the victim. Needless to say, the present offense is also heinous, but this Court cannot rule out and ignore the fact that the applicant has clean antecedents.

16. Fifthly, the applicant is a young boy and is in the formative years of skill development, and given the preceding factors, he should not be restricted from acquiring employable education.

17. On all these counts alone, the applicant is entitled to suspension of his sentence.

18. Moreover, as per the custody certificate dated Jan 14, 2026, the applicant's total

<sup>1</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, §2(12) "child" means a person who has not completed eighteen years of age;

<sup>2</sup> POCSO, §2(d) "child" means any person below the age of eighteen years;

<sup>3</sup> §2(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

<sup>4</sup> §15. Preliminary assessment into heinous offences by Board.—(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

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custody is for about 05 months & 25 days.

19. Furthermore, this court has around 18 to 19 death references pending for final hearing, which have to be given priority, and every murder reference will take more time than any other case; delay in decisions might be a ground for commutation. Additionally, there are a large number of appeals against conviction where more than one person was murdered, cases involving murder and dacoity are pending, and where some of the convicts are habitual offenders, this Court has to draw a priority list for the cases, and if such a list is made, the present case would certainly fall lower on the rung. Although this court has not used any algorithm-based tool to clearly point out how much time it would take for this present appeal to be finally heard, and also no artificial intelligence is being utilized to come to such a conclusion without referring to such scientific tools, in our raw assessment of the disposal of criminal appeals, the appeal is not likely to be taken up in the near future.

20. Given the above, without commenting on the case's merits and in the peculiar facts and circumstances of the matter, the execution of the sentence of imprisonment is suspended till the pendency of the appeal, subject to the Applicant furnishing bail bonds of Rs. 25,000/- with one surety of the like amount to the satisfaction of the Chief Judicial Magistrate/ Judicial Magistrate/ Illaqa Magistrate, within 30 days from today.

21. If the bail bonds are not furnished within 30 days, then the Applicant's Counsel is to inform this Court so that the bail bond conditions are diluted.

22. The sentence has been suspended subject to the convict abiding by the following conditions:

23. The convict-applicant shall mention the permanent and present residential address along with the present mobile number, and if there is no mobile number, then the mobile number of the person who shall convey the information sent by any Court, the Prosecution, Police, etc, to the applicant. In case of a change of address or phone number, the SHO of the Police Station, where FIR was investigated, shall be informed through any means and the said change shall also be informed to the Court where bail bonds were furnished. The said change in information is also required to be updated on this Court's web portal, as and when such a facility is made available.

24. Given the nature of the allegations and the other circumstances peculiar to this case, the applicant shall not enter the property, workplace, or residence of the victim and the victim's family. This Court is imposing this condition to rule out any attempt by the accused to cause discomfort to the victim and her family. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (CrI.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021-INSC-192, 2021 SCC Online SC 230.

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25. Given the background of allegations against the applicant, it becomes paramount to protect the victim’s family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the pendency of this appeal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction.] Given the nature of the allegations and the other circumstances peculiar to this case, the Applicant/Convict shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the Applicant shall be entitled to renew and reclaim it in case of acquittal in this instance, provided otherwise permissible under the relevant rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

26. This suspension of sentence is conditional, with the foundational condition being that if the convict repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, the State shall file an application for cancellation of the order of suspension of sentence.

27. The furnishing of the personal bonds shall be deemed acceptance of all stipulations, terms, and conditions of this bail order.

28. In *Amit Rana v. State of Haryana*, CRM-18469-2025 [Decided on 05.08.2025], in CRA-D-123-2020], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that “*To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished.*”

29. **Application stands allowed.**

(ANOOP CHITKARA)  
JUDGE

(SUKHVINDER KAUR)  
JUDGE

05.02.2026  
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES