IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.672 of 2023

Arising Out of PS. Case No.-162 Year-2021 Thana- MAHUA District- Vaishali

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Md. Alam, Son of Md. Akhtar, Resident of Village- Rampur Singhara, PS- Mahua, Distt- Vaishali.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :

For the Appellant	:	Mr. Krishna Prasad Singh, Sr. Advocate Mrs. Meena Singh, Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP
For the Informant	:	Mr. Dharmendra Kumar Paswan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-04-2026

Heard learned Senior Counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 25.04.2023 (hereinafter referred to as the ‘impugned judgment’) and order of sentence dated 15.05.2023 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-VI-cum-Spl. Judge, POCSO, Vaishali at Hajipur (hereinafter referred to as the ‘learned trial court’) in POCSO Gr. No. 09 of 2021 arising out of Mahua P.S. Case No. 162 of 2021. By the impugned judgment, the appellant has been convicted for the

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offences punishable under Sections 377/34 of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced to undergo rigorous imprisonment for twenty (20) years with a fine of Rs. 20,000/- under Section 6 of the POCSO Act and in default of payment of fine, he shall further undergo rigorous imprisonment for one year. He has also been sentenced to undergo rigorous imprisonment for ten (10) years with a fine of Rs. 10,000/- under Section 377/34 IPC and in default of payment fine, he shall further undergo rigorous imprisonment for six months. Both the sentences are to run concurrently.

3. The prosecution case is based on the written information dated 26.02.2021 submitted by the informant/ victim boy (PW-1). In his written information, he has stated that on 24.02.2021 at about 06:30 AM in the morning, when he was sitting at the shop of Sunny Kumar and Golu Patel situated near Sahara India Office at Mahua Bazar, Samastipur Road, two persons came there and enquired from Sunny Kumar about the victim boy. On which Sunny Kumar told them that he is a good-mannered boy and is in search of some work due to his poor financial condition. Thereafter, these two persons told the victim to accompany them, they will provide him money, food and good clothes. They also said that he has to discharge their household work and assured him that he will be given opportunity

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for further study. Thereafter, Golu Patel told the victim boy to accompany them as they were known to Golu Patel.

Those two accused persons were Ranjeet Patel and Md. Alam (this appellant). The victim boy along with two accused persons came at the house of Md. Alam on their motorcycle. Both of them told him to have food and go to sleep. He was trying to sleep, however, was not able to sleep. In the meantime, he saw that both of them started sipping alcohol from a bottle after pouring in glass and thereafter, he fell asleep. In the late night, he felt that somebody has opened his pants and trying to insert something through his anus which was painful. Thereafter, he woke up and saw that both the accused persons were naked and were doing unnatural sexual offence with him. He tried to prevent them but they threatened him to kill if he raised the alarm. These two accused persons committed unnatural sexual offence with the victim boy one by one by pressing his mouth. Thereafter, they put their clothes on and also told him to wear his clothes and threatened him not to disclose this to anyone, otherwise he will be killed.

Thereafter, in the morning of 25.02.2021 at about 09:30AM, both the accused persons left him on their motorcycle at the shop of Golu Patel. He felt the pain for the whole day but in the evening when he could not bear the pain, he disclosed about the said incident to his nearby neighbours and members of his family. He was taken to

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Mahua Sub-Divisional Hospital for treatment. Later on, he was referred to Sadar Hospital, Hajipur for better treatment. He was told to inform the concerned police station.

4. On the basis of this written information, FIR being Mahua P.S. Case No. 162 of 2021 dated 05.03.2021 was registered under Section 377 IPC amd Section 4/8 of the POCSO Act against (1) Sunny Kumar, (2) Golu Patel, (3) Ranjeet Patel and (4) Md. Alam (this appellant). After investigation, police submitted chargesheet bearing Chargesheet No. 817 of 2021 dated 10.12.2021 against Md. Alam for the offences punishable under Section 377/34 IPC and Section 4/8 of the POCSO Act keeping investigation pending against other accused persons.

5. Learned trial court vide order 16.12.2021 took cognizance of the offences punishable under Section 377/34 IPC and Section 4/8 of the POCSO Act against Md. Alam. Charges were read over and explained to the appellant in Hindi to which he denied the charges and claimed to be tried. Accordingly, charges were framed vide order dated 24.01.2022 for the offences punishable under Section 377/34 IPC and Section 6 of the POCSO Act.

6. In course of trial, the prosecution examined as many as five witnesses and got exhibited certain documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

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List of Prosecution witnesses

Prosecution Witness No.	Name of the Witness	Description of the Witness
PW-1	Victim	Victim/ Informant
PW-2	Dr. Rakesh Kumar	Medical Officer
PW-3	Mother of the Victim	Mother of the Victim
PW-4	Santosh Kumar Pankaj	I.O. of the Case
PW-5	Vishnudev Dubey	Sub-Inspector of Mahua Police Station

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'1'	Written application	PW-1
'2'	Statement of 164 CrPC	PW-1
'3'	Signature of the Victim of the Forwarding letter from Mahua Hospital for treatment in the Sadar Hospital	PW-1
'4'	Medical Report of the Victim	PW-2
'5'	Supplementary Test report of the Victim	PW-2
'6'	Chargesheet	PW-4
'7'	Arrest Memo	PW-4
'8'	Formal FIR	PW-5

7. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. In this 313 CrPC statement, he pleaded innocence and stated that Prem Shankar and Uday Shankar had already registered case against me and they again implicated him in the present case. The Defence has

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produced three witnesses and exhibited some documentary evidences which are being mentioned hereunder in tabular form:-

List of Defence witnesses

Defence Witness No.	Name of the Witness	Description of the Witness
DW-1	Md. Alam	Accused of the case (appellant herein)
DW-2	Shahnaj Khatoon	Other witness
DW-3	Ram Shankar Ray	Other witness

List of Exhibits on behalf of Defence

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'A'	Certificate of Gram Panchayat Singhara	DW-2
'D1'	Certified Copy of FIR of Mahua P.S. 591/19	
'E'	Photocopy of FIR of P.S. Rajapakar 32/2020	
'F'	Photocopy of FIR of P.S. Case Mahua 99/2021	
'F1'	Photocopy of written application of Mahua P.S. Case 99/2021	
'G'	Photocopy of written application of Mahua P.S. 706/2020	
'H'	Photocopy of FIR of Mahua P.S. 18/2020	

Findings of the Learned Trial Court

8. The learned trial court having examined the entire prosecution evidences found that the emphasis of defence regarding false implication due to previous enmity cannot be a

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ground to discard the witnesses' evidence if such evidence is found to be reliable while upholding conviction of an accused.

9. On the point of *alibi* taken by the defence, learned trial court took note of the argument of the defence counsel that at the time of occurrence, the accused being an Advocate was busy in court for preparing the filing of the bail bond and on the other hand, the learned counsel submitted that the accused was at the Hon'ble High Court, Patna at Mazar to join the *tajposhi* from 2:00 pm to 4:00 pm. Learned trial court observed that it is highly unbelievable that a person who is an Advocate is present at three places of surroundings of 20-30 kms at the same time.

10. Learned trial court negated the submission of learned defence counsel regarding contradiction on the point of age of the victim boy by referring the fact that no documentary evidence has been brought on record regarding the education of the victim boy as the victim boy is from very poor family and is not a school going student and his mother is rustic. Learned trial court took note of injury report of the victim which suggested that the victim boy was minor and concerned medical expert being PW-2 found the case of sexual assault. Learned trial court found that since the accused facing trial is accused in another case also, there is no

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reason of false implication of the accused by another person of poor and from a Scheduled Caste family of the vicinity.

11. Learned trial court observed that on the ground of minor contradictions, the evidences of prosecution witnesses cannot be ignored, the version of the occurrence as alleged and the medical examination with the opinion of suspected case of sexual assault cannot be put outside on the ground of minor contradictions or on the ground of previous enmity. Accordingly, learned trial court found that the prosecution has successfully proved the case against the accused under Sections 377/34 IPC and Section 6 of the POCSO Act.

Submissions on behalf of the Appellant

12. Mr. Krishna Prasad Singh, learned Senior Counsel, assisted by Mrs. Meena Singh, learned Advocate, has assailed the impugned judgment and order on various grounds. It is submitted that in this case, there is a delay of nine days in lodging the First Information Report. The victim boy (‘X’) claimed that one person met him in the Sadar Hospital at Hajipur, to whom he explained the occurrence, he wrote the written information, which the victim dropped in the post office. The victim could not give the identity of the person who wrote the written application, which is the basis of the present FIR. The Sub-Inspector of Police Krishnanand Jha,

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who had drawn the formal FIR (Exhibit ‘8’), has not been examined.

13. Learned Senior Counsel submits that contrary to the claim of the victim that he had dropped the written information in the post office, his mother (PW-3) has stated that her son had informed her about the occurrence on the next day of the occurrence in the morning, whereafter she took her son to Government Hospital, Manjhaul for treatment, where he was treated, the doctor had given her the treatment papers, whereafter she returned home and thereafter she went to Mahua Thana with the victim boy and lodged the case. It is submitted that the very lodgment of the FIR in this case is under shadow of cloud. The mother of the victim has categorically stated in paragraph ‘5’ of her deposition that she had told Darogaji about the occurrence as disclosed to her by her son and it was Darogaji who had written the application.

14. Learned Senior Counsel submits that in this case, in the written application (Exhibit ‘01’), the age of the victim has been disclosed as 12 years, but in course of his statement under Section 164 CrPC, as also in course of trial, the victim boy has not disclosed his age. In the prescribed proforma, the age of the victim is recorded as 12 years and he is said to be a student of Class VIII.

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His section 164 CrPC statement was recorded on 15th April, 2021 i.e. after more than a month from the date of lodgment of the FIR and more than one and a half month from the date of occurrence. In course of trial, the victim boy has stated that he had studied up to Class IV. His statement has been recorded in course of trial on 2nd February, 2022. The I.O. has not made any investigation and verification as to the age of the victim boy. The date of birth of the boy mentioned in his school admission register has not been brought on record and there is no ossification and dental test of the victim boy to assess his age medically. The defence has questioned the age of the victim boy in course of trial by suggesting the I.O. (PW-5) that the age of the victim as disclosed in the FIR and that of the affidavit filed by his father in his affidavit are different and that the victim boy looks like 18 years old. The I.O. (PW-5) has stated that he had not conducted any verification as to age of the victim. It is, thus, submitted that in absence of age determination of the victim boy in accordance with the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015'), the charge under Section 6 of the POCSO Act is liable to fail.

15. Learned Senior Counsel further submits that in this case the second place of occurrence is said to be the house of the

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appellant in village Rampur, Singhara which is at a distance of 12-13 kilometer from the first place of occurrence i.e. the *gumti* of Sunny Patel from where the victim boy was picked up. The I.O. (PW-5) has stated that he had gone to the second place of occurrence but that is the house of one Siraj Ahmed. I.O. (PW-5) has not recorded that in which direction of the said house of Siraj Ahmed, the house of this appellant is situated. Siraj was found handicapped and he was living with his wife in his house. The I.O. (PW-5) has stated that father of the victim has come to police station and submitted an affidavit saying that the occurrence as alleged is false and concocted.

16. Learned Senior Counsel further submits that the victim boy has stated that he had gone to Mahua Sub-divisional Hospital on his own where he was treated and from where he was referred to Sadar Hospital, Hajipur. He claimed that he had gone to Hajipur but he could not get any treatment there as he was told that he should call his family members only then he may be treated. He said that from Mahua he had alone gone in a bus to Hajipur. Contrary to his claim, his mother (PW-3) has stated in her examination-in-chief that on the next day of the occurrence, her son had disclosed her about the occurrence in the morning and thereafter she had taken the victim boy to Government Hospital,

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Manjhaul where he was treated and the doctor had given her the treatment paper. Prosecution has not produced any treatment paper of Manjhaul Government Hospital. PW-3 has not stated that her victim son had gone to Mahua Hospital. She denied the suggestion of the defence that in course of investigation, she had not made any statement before police that she had taken her son to Manjhaul Hospital for treatment.

17. In complete conflict with the statements of PW-1 and PW-3, who differ with each other, the doctor of Mahua Hospital namely Dr. Rakesh Kumar (PW-2) has deposed that on 25.02.2021, he was posted as Medical Officer in SDH Mahua, Vaishali. He had found blood stain around perennial region which was fresh in nature. Patient was referred to Sadar Hospital, Hajipur for detailed examination and further treatment. The doctor assessed the time of injury as within 6 hours. PW-2 reserved his opinion on the nature of injury awaiting detailed report from Sadar Hospital, Hajipur. He has proved the medical examination report as Exhibit ‘4’ and the supplementary report dated 28.07.2021 as Exhibit ‘5’. In his supplementary report, he wrote that patient give history of sexual assault, his parents were not with him. The patient did not go for examination and treatment in Sadar Hospital, this time PW-2 opined that it is a suspected case of sexual assault.

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18. In his cross-examination, the doctor has opined that he had not found any bruise around the anus and for further treatment, consent of the parents was required. It is submitted that in paragraph ‘12’ of his deposition, PW-2 has stated that parents of the victim were not with him and those who were with him were not ready to give consent. In paragraph ‘14’, PW-2 has stated that when the victim boy left, there were 6-7 persons with him. PW-2 has further disclosed that the persons who did not give consent said that they were neighbours and they cannot give consent. In paragraph ‘18’ of his cross-examination, PW-2 has stated that he had not given any statement before police. The I.O. had given application to him in which it was stated that the victim was not treated in Sadar Hospital, Hajipur, therefore, he should give his report. PW-2 has further stated that he had given supplementary report saying that it is a case of suspected sexual assault only on the basis of blood stain. He had not examined the source of the blood stain.

19. Referring to the deposition of doctor (PW-2), learned Senior Counsel submits that in fact PW-2 was not examined by the I.O. and he has clearly stated that the duration of injury was within 6 hours, if the victim was examined by the doctor on 25.02.2021 at 7.25 pm and the occurrence had taken place in the night of

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24.02.2021/25.02.2021, the time lapsed would be of at least 18-19 hours and in such circumstance, fresh blood would not have been present. Moreover, the doctor has himself stated that he has not examined the source of the blood stain. In such circumstance, the submission is that the learned trial court has grossly erred in concluding that it is a case of sexual assault upon the victim. The father of the victim had not come to support the prosecution case.

20. Learned Senior Counsel submits that in this case, the appellant has himself deposed as DW-1. He has explained the reason for his false implication. He has stated that he is an Advocate and he is fighting on behalf of the wife of Uday Shankar Kumar, Prem Shankar Kumar @ Raja Rai and Md. Raji Ansari in Title Suit No. 1317/2015 pending in the court of Sub-Judge-IV and another Title Suit No. 56/2020 against Gopal Shah and Uday Shankar Kumar. The informant Suraj Singh in POCSO Case No. Rajapakar 32 of 2020 is his client which is pending in the court. His client Suraj Singh had called for information under the Right to Information Act as regards the Krishna Hospital, Mahua and his degree. In this hospital, the informant and his mother are working. Civil Surgeon’s report has come saying that the doctor has no degree and the hospital is running on contract basis. This case has been lodged because of enmity and in the past two cases, namely

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Mahua P.S. Case No. 591 of 2019 and 684 of 2019, were lodged against him and his family members.

21. The other two defence witnesses have also deposed in favour of the appellant. DW-2 is the Sarpanch of the Panchayat who has stated that police had gone to the house of Md. Siraj and not to the house of Md. Alam.

22. On the aforementioned grounds, learned Senior Counsel for the appellant submits that in this case, the presumption under Section 29 and 30 of the POCSO Act would not be attracted. The presumption of innocence of the accused-appellant would not be lost in a case prosecuted under the provisions of the POCSO Act. The victim boy (PW-1) is not a sterling witness. There are huge contradictions in the statements of prosecution witnesses, therefore, on these grounds, as stated above, the impugned judgment and order are liable to be set aside.

Submissions on behalf of the State and the Informant

23. The appeal has been contested by learned Additional Public Prosecutor for the State and learned counsel for the informant. It is submitted that some trivial contradictions in the statement of the prosecution witnesses would not create doubt over the prosecution case. It is their submission that the victim comes from a poor strata of family and he has stated that his father has

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gone in collusion with the accused persons. It is submitted that there is some delay in lodging of the FIR, but the written application (Exhibit ‘01’) is dated 26.02.2021, which shows that the written application was dispatched to the police station on 26.02.2021. As regards the age of the victim, learned counsel submits that there are some contradictions on the point of age but the learned trial court has rejected minor contradictions in the evidences of the prosecution witnesses and has held that the victim boy was below 18 years. It is submitted that the learned trial court has rightly relied upon the evidence of the prosecution witnesses and upon finding that there was no reason for false implication of the accused, the learned trial court has passed the judgment of conviction and order of sentence.

Analysis and Consideration

24. Having heard learned Senior Counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the informant as also on perusal of the trial court’s records, this Court finds that in this case there is a delay of 9 days in lodging of the FIR. The application (Exhibit ‘01’) giving rise to the present FIR has been signed by the victim boy, but it is his admission that the said application was written by a person who met him in the Sadar Hospital at Hajipur and to whom he had

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explained the whole occurrence. According to the victim boy, the said person was a general person and he could not give the name of the person who wrote the application. A perusal of the deposition of the victim boy (PW-1) would show that he claims to have posted the application (Exhibit '01') in the post office, but in paragraph '26' of his deposition, PW-1 has claimed that he had complained in the police station on 26th. In paragraph '21', he claims that he had alone gone to the police station. This statement of PW-1 creates doubt as to who wrote the written application (Exhibit '01'). The doubt goes deeper when this Court finds that his mother (PW-3) claims that she had taken her victim boy to the police station at Mahua and she further says that the application was written by Darogaji. She has also stated that Darogaji had recorded her statement 8 days after lodgment of the case. If the statement of PW-3 is examined, it is found that she claims to have come to know about the occurrence from her son on the next day of the occurrence in the morning, but the victim (PW-1) has stated that on 25.02.2021, he had alone gone to Mahua hospital. PW-2 has recorded the time of examination of PW-1 as 7.25 pm. His parents were not with him, therefore, the statement of PW-3 that she had come to know about the occurrence on the next day in the morning is not a reliable statement. PW-3 has stated that she had

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taken the victim boy to Government Hospital, Manjhaul, whereas the victim boy says that he had alone gone to Sub-Divisional Hospital, Mahua. In our opinion, the evidence of PW-1 and PW-3 are not only contradicting each other, they are contradicting themselves also on various aspects.

25. This Court further finds that the learned trial court has itself recorded in its finding that "if the submissions of learned defence counsel is evaluated, the evidences on the point of age of the victim boy is contradictory…." Despite this, the learned trial court did not think it just and proper to determine the age of the victim in accordance with the scheme of Section 94 of the Act of 2015.

26. We have noticed hereinabove in the submissions of learned Senior Counsel for the appellant that how the age of the victim boy has not been disclosed by the prosecution in course of trial and the I.O. (PW-5) himself stated that he had not conducted any verification on the age of the victim. In section 164 CrPC Statement, the victim is said to be studying in Class VIII but in course of trial, he has stated that he has studied up to Class IV. The prosecution has not disclosed the date of birth of the victim boy recorded in his first school admission register. No ossification and dental test of the victim has been conducted to assess his age. We

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are, therefore, of the considered opinion that in this case, the prosecution has miserably failed to prove that the victim would come within the definition of the word “child” as envisaged under Section 2(d) of the POCSO Act.

27. This Court further finds that the victim had gone to Mahua Hospital with 6-7 persons. PW-2 has stated so but the victim claims that he had gone alone. It is, thus, evident that the victim has been tutored not to disclose names of those 6-7 persons who were with him in the Mahua Hospital. Those 6-7 persons had said to PW-2 that they were from the neighbourhood of the victim and they cannot give consent. This makes the whole case suspicious.

28. PW-2 has stated that he had not examined the source of the blood stain. He had referred the victim boy to Sadar Hospital, Hajipur but the victim had not received treatment in Sadar Hospital, Hajipur. The age of injury has been mentioned as within 6 hours and the doctor has noticed fresh blood but in course of his cross-examination, PW-2 has clearly stated that the blood would clot if the injury is on the upper part, within 3-4 minutes, he had not found any bruise around the anus. PW-2 has clearly stated that he had not made any statement before police. He had not examined the source of the blood stain, therefore, in our opinion,

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Exhibit ‘4’ and Exhibit ‘5’ issued by PW-2 are not a conclusive proof of the fact that anal intercourse was done with the victim boy.

29. This Court further finds that in this case, the second place of occurrence is said to be the house of Md. Alam (the appellant) but the I.O. (PW-5) claims that he was shown the second place of occurrence which was the house of Md. Siraj who was a handicapped person living in his house with his wife. He was not examined. DW-2, who is Sarpanch of the Panchayat, has stated that police had not gone to the house of the appellant.

30. We have further noticed that in this case, the police officer Krishnanand Jha, who had drawn the formal FIR, has not been examined. In our considered opinion, the presumption contained under Sections 29 and 30 of the POCSO Act would not be attracted. PW-1 cannot be put in the category of a sterling witness for the obvious reasons showing huge contradiction in his statement. In a case under the POCSO Act, the presumption of innocence is not lost.

31. For the aforesaid reasons, we set aside the impugned judgment and order of the learned trial court.

32. The appellant is acquitted of the charges giving him benefit of doubt.

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33. The appellant is said to be in custody. He shall be released forthwith, if not wanted in any other case.

34. This appeal is allowed.

35. Let a copy of this judgment together with the trial court's records be sent down to the learned trial court

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

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CAV DATE	06.04.2026
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