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**CUMALATIVE REPORT ON NEWLY LEGISLATED ACT:  
THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT  
("POCSO") 2012**

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**REPORT ON THE MOCK TRIAL CONDUCTED ON SECTION 42 OF  
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985**

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## **ANALYSIS: THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO)**

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The Protection of Children from Sexual Offences Act (“POCSO”) 2012 was formulated in order to effectively address sexual abuse and sexual exploitation of children. It provides for protection of children from offences of sexual assault, sexual harassment and pornography. This act has some special features, which incorporates child friendly procedures, recording of evidences, establishment of special court and speedy trial for cases falls under this Act.

**Why there was a need for special legislation:** - Before this Act, most of the sexual offences are covered under IPC, 1860. But IPC does not provide for all types of sexual offences against children and it is general legislation, it does not distinguish between adult and child victims.

Under Section 2 (1) (d) of the Act defines a child as any person below eighteen years of age. It also defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography. These offences have been clearly defined first time in law. It also provides for stringent punishment which is inflicted as per the gravity of offences.

Section 3 defines “penetrative sexual assault” and any person who is said to commit such offence shall be punished for imprisonment of not less than 7 years which may extend to imprisonment for life. The said person will also be liable for fine [Section 4]. Section 5 of POCSO deals with “Aggravated penetrative sexual assault”, minimum punishment for this offence is 10 years of imprisonment which may extend to imprisonment for life and fine [Section 6]. It deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority like a family member, police officer, teacher, or doctor. Offences like sexual assault, aggravated sexual assault and sexual harassment are defined under Section 7, 9 and 11 respectively and punishment for these kinds of offences varies between 3 to 5 years of imprisonment and fine.

Chapter V of POCSO deals with procedure for reporting of cases. Section 19 provides that Complaint for such offence can be made to the local police or Special Juvenile Police Unit (SJPU), if it has been made by the child itself the report will be recorded in a simple language so that the child understands the content of the report. Within 24 hours of the report, if the child is in need of care and protection then SJPU or local Police has to make immediate arrangements for

that purpose such as obtaining emergency medical treatment for the child and placing the child in a shelter home, and bringing the matter in front of the Child Welfare Committee (“CWC”), should the need arise. POCSO also provides for the establishment of Special Courts for trial of offences falling under the act, apart from CWC such matters should also be reported to these special courts [Section 19(6)]. If they fail to record such offence, they will be liable for punishment i.e. imprisonment of 6 month (max) and fine.

The media has been barred from disclosing the identity of the child without the permission of the Special Court [Section 23]. The Punishment for contravening this provision may be from 6 month to 1 year and fine.

Chapter VII of POCSO deals with Special Courts which are established for the purpose of providing speed trial. Under Section 28 of POCSO, State Government in consultation with Chief Justice of High Court can designate a Court of Session to be a Special Court for each district. Provisions of Code of Criminal Procedure, 1973 will apply to the proceedings before Special Courts [Section 31].

Powers and Procedures of Special Courts are discussed under Chapter VIII of POCSO i.e. Section 33-38. Special Court can take cognizance of any offence under this act upon receiving a complaint or on the police report itself. Counsel of Accused cannot put questions directly to child during examination-in-chief, cross-examination or re-examination, question will be put before the special court first then it will communicate the same to child. A child friendly atmosphere shall be created by the court i.e. it can allow the family members or guardian to be present in court. If any child has committed an offence under the act or his/her age is in question before the court then Special Court has power to determine the age of such person and it shall record in writing its reason for such determination.

Timeline is given for recording of evidences (30 days from the date of taking cognizance) and completion of trial (1 year from the date of taking cognizance) [Section 35]. Trials of such cases will be *in camera* and in the presence of the parents of child or guardian if any [Section 37]. Assistance of an interpreter or expert can be taken by the Special Court while recording the evidence of child.

**II. SUMMARY OF ALL THE HIGH COURT & SUPREME COURT JUDGMENTS  
INVOLVING POCSO ACT, 2012**

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SL. NO	NAME OF THE CASE	FACTS OF THE CASE	REMARKS (SC/HC)
1.	<p style="text-align: center;"><i>Nishu</i> v. <i>Commissioner of Police, Delhi and Ors.</i></p> <p style="text-align: center;"><u>2014 (3) ACR 2516 (SC)</u></p> <p style="text-align: center;"><b>P. SATHASIVAM C.J.I., RANJAN GOGOI N.V. RAMANA, JJ.</b></p>	<p>Petitioner is a minor who was kidnapped on 25.10.2013 by a group of nine persons who had kept her confined up to 8.11.2013. The accused persons, in different combinations, had repeatedly raped her and that one of the accused, named, Pradeep is a constable in Haryana Police.</p> <p>After being recovered, medical examination of the girl was done, but neither the copy of the report was not furnished nor any FIR under Section 376 D of the Indian Penal Code or the provisions of the POCSO Act registered against the accused persons.</p> <p>Petition under Article 32 has been filed seeking directions from the Court for registration of FIR under above mentioned sections; for the arrest of the accused. Appropriate action against the officers of the Delhi and Haryana</p>	<p>In view of the arguments asserted by the counsels of both the respondents, court held that no order or direction to the first Respondent would be justified in view of the fact that the case has been registered by the Haryana Police and has been investigated by the authorities of the State of Haryana.</p> <p>The Hon'ble Court also find out that as the charge sheet has been filed against all the nine accused and the trial has commenced in the meantime it will be wholly inappropriate to exercise our jurisdiction under Article 32 of the Constitution.</p>

		<p>police by way of departmental proceedings for their refusal/failure to register the FIR under the aforesaid sections of the Indian Penal Code as well as the provisions of POCSO.</p>	
2	<p><b><i>Ashish Kumar and Ors.</i></b>  <b>v.</b>  <b><i>State of U.P. and Ors.</i></b>  <u>MANU/UP/0439</u>  <u>/2015</u>  <b>MANOJ MISRA,</b>  <b>J.</b></p>	<p>FIR was lodged by the victim's father Deesaa Police Station at P.S. Rauja, district Shajahanpur under sections 147, 354 A, 352, 323 and 506 of IPC and Sections 7/8 of POCSO. After investigation, the police laid charge-sheet under Sections 352, 323 and 506 IPC only. As a result, Victim's father filed an affidavit alleging therein that on the date of the incident that is 30th October, 2014, the victim's age was about 16 years and as she had alleged molestation, etc. in her statement, offences punishable under sections 147 and 354A of IPC and sections 7/8 of POCSO Act were also made out.</p> <p>Upon receiving such affidavit, the learned Magistrate perused the police report and passed the impugned order dated 19.03.2015 thereby directing return of the</p>	<p>Court observed that as the instant matter arises out of case which is based on a police report and not on the complaint, after submission of the charge-sheet, the matter goes to the Magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial or not. The Magistrate cannot exclude or include any section into the charge-sheet after investigation has been completed and charge-sheet has been submitted by the police.</p> <p>The same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge sheet it is open for the prosecution to contend before the appropriate trial court at the stage of framing of charge that on the given state of facts the charge of</p>

		<p>charge-sheet for being laid before the Special Court constituted under POCSO Act.</p> <p>In the order impugned it was observed that from the material available in the case diary offences punishable under Sections 323, 353, 354 and 506 IPC and Sections 7/8 of POCSO Act were prima facie made out, but as it was not empowered to take cognizance of the offences punishable under the POCSO Act, therefore, the charge sheet is to be returned for presentation before the Special Court.</p>	<p>certain other offences should also be framed.</p> <p>The Hon'ble High Court held that in a case which is triable by a Court of Session though the Magistrate cannot add or alter a charge but he is empowered by sections 209 and 323 of the Code to commit the case to a Court of Session. Since under Section 31 of the POCSO Act a Special Court constituted under the said Act is deemed to be a Court of Session, the Magistrate, if he finds that offences triable by a Special Court under the POCSO Act are also made out, he is empowered to commit the case to the Special Court by taking aid of the provisions of section 209 of the Code. But such commitment arises after the Magistrate takes cognizance of the offences laid in the charge sheet.</p>
3.	<p><b><i>Gajraj Singh</i></b> v. <b><i>State of U.P.</i></b>  <u>2015 (3) ADJ</u> <u>350</u></p>	<p>FIR was registered by the applicant (victim's father) alleging that his minor daughter whose date of birth is 18.8.1996, was enticed away by one Ajit Singh. She was recovered on 20.05.2014 from the possession</p>	<p>In the instant case, the Hon'ble Court said that it is a well-settled law that a minor cannot be confined in Nari Niketan against her wishes. In this regard, the Judgment of this same Court was put forth. In the case of <u>Smt.</u></p>

	<p><b>RAMESH SINHA, J.</b></p>	<p>of Ajit and charge sheet has been submitted in the case against Ajit only under Section 366 and 363 and 3 &amp; 4 of POCSO Act.</p> <p>Thereafter applicant as well as accused ajit moved an application before the Special Judge/Additional Session Judge for the custody of girl. Father claimed that she is still a minor, whereas accused wanted custody of her on the ground that he was her husband. Rejecting both applications, court sent the girl to Nari Niketan.</p> <p>Hence the present petition has been filed by the applicant for quashing of the impugned order passed by the Court below.</p>	<p><u>Parvati Devi v. State of U.P. and another, 1992 All CrI C 32</u>, it has been observed by the Apex Court that the confinement of a victim in Nari Niketan against her wishes, cannot be authorised under any provisions of the Code. There is no such legal provision wherein the Magistrate has been authorized to issue directions that a minor female child shall, against her wishes, be kept in Nari Niketan.</p> <p>Therefore, Court held that it is clear cut case of illegal confinement of minor against her wishes violating fundamental right. Hence, the impugned order of the Special Judge/ Additional Sessions Judge is hereby quashed.</p>
<p><b>4.</b></p>	<p><b><i>Avinash v. State of Karnataka</i></b></p> <p><u>MANU/KA/1273/2015</u></p> <p><b>A.S. PACHHAPURE, J.</b></p>	<p>On 22.10.2013 the appellant committed an act of sexual assault after kidnapping the victim in the night hours, then he took her to Bangalore and other places, there also he had sexual intercourse with her.</p> <p>After the incident, Complaint has been filed on 23.10.2013 and registered in Crime No. 188/13. On completion of the investigation, charge-sheet was</p>	<p>Court observed that the scrutiny of the material placed on record would reveal that the age of the victim is an important aspect to be decided before considering the question as to whether there was either an offence under Section 4 of the POCSO Act and Section 366 IPC.</p> <p>To prove the age, merely the Xerox copy of SSLC marks card is given. Therefore, it appears to the</p>

		<p>laid against the appellant/ accused for offence punishable under Section 366 IPC and under Section 4 of the POCSO Act.</p> <p>The trial court has convicted them under the said offences. Aggrieved by the conviction and sentence, the present appeal is filed before the Hon'ble High Court.</p>	<p>Court that it would be proper to give an opportunity to the prosecution to produce the original of Ex. P17 i.e. SSLC marks card and to consider the same on its production, permit to produce any other supporting evidence and then dispose of the case in accordance with law. Hon'ble Court set aside the conviction and sentence by remitting the matter to the trial Court with a direction to afford an opportunity to the prosecution to produce original of the above mentioned document.</p>
5.	<p><b><i>Santhosa</i></b> v. <b><i>State</i></b></p> <p><u>2014 (3) KarLJ</u> <u>251</u></p> <p><b>BUDIHAL R.B.,</b> <b>J.</b></p>	<p>Ravi (victim's father) lodged the complaint on 10-1-2014 stating that his daughter Rachana went to school and did not return thereafter. On enquiry, he got to know that sandeep (Accused-1) has kidnapped her. On the basis of the said complaint, firstly, the case was registered against Sandeep for the alleged offences punishable under Section 366A of IPC, but, subsequently, by filing the remand application Accused 2 &amp; 3 were also included in the case and the alleged offence under Section 376 read with</p>	<p>Court looked into the material placed on record and held that as on the date of the alleged incident, she was at the age of 13 years. Therefore, the contention of the learned Counsel for the petitioner that there was a free volition of girl and both the petitioner and the victim girl married each other with their free will was rejected by the Court.</p> <p>Seeing the circumstances in the case and the gravity of the offences, court rejected the bail application of A-1. But the anticipatory bail of A-2 &amp; 3 was</p>

		<p>Section 34 of IPC and also under Sections 3 and 4 of the POCSO Act were added in the case.</p> <p>Before this Hon'ble Court, two petitions have been filed i.e. for Bail of A-1 &amp; Anticipatory Bail for A-2 &amp; 3.</p>	<p>allowed on following conditions.</p>
6.	<p><i>Vijaykumar</i> v. <i>The State of Karnataka</i></p> <p><u>MANU/KA/044</u> <u>3/2015</u></p> <p><b>K.N. PHANEENDRA, J.</b></p>	<p>The petitioner has been working in the Girls Hostel attached to the Kittur Rani Chennamma Residential School and he has been ill-treating, harassing and sexually exploiting the girl students in the said Institution. Another accused Smt. Jyothi (A-2) has been giving assistance to the said person in order to facilitate the petitioner.</p> <p>The Principal of Kittur Rani Chennamma School, Almel has lodged an FIR for such act. The Police have investigated the matter and submitted the charge sheet. They have recorded the statements of the girl students, Head Master and others during the course of investigation.</p> <p>Petition is filed before this Court by A-1 for grant of bail on the ground of parity as A-2 has been granted bail by the Court.</p>	<p>In the instant case, Court observed that none of the girls have stated as to whether any one of them has been exploited by anybody. Every student has stated that some students were called by the petitioner and he used to exploit her every day. Except that nothing has been stated in the statements. Even the other witnesses have also stated in the similar fashion that they received information that the accused has been exploiting the girls in the said hostel. But nobody has stated that who was the girl actually exploited out of the girls examined by the Police.</p> <p>Therefore on the basis of lack of strong reasons, the court has not rejected the bail application and held that petitioner is entitled to be enlarged on bail.</p>

7.	<p><i>Siddu</i> v. <i>State of Karnataka and Ors.</i></p> <p><u>MANU/KA/086</u> <u>5/2015</u></p> <p><b>K.N. PHANEENDRA, J.</b></p>	<p>Petitioner (whose age is in question before the court) is alleged to have ravished the victim girl aged six years. The allegation against the accused is a penetrative sexual assault against the victim, therefore, the police have registered a case for the offences-punishable under Sections 376(F), 506 of IPC and also under Section 6 of the POCSO Act, 2012</p> <p>When the accused has approached the Sessions Court for grant of bail during investigation, the learned Sessions Judge has referred the accused to Juvenile Justice Board holding him as a minor. Further, JJB again referred the matter to Session Court for determining age.</p>	<p>Interpretation of Section 34 of POCSO Act is done by the court in this pertinent case. Court said that the main object of considering the age of the accused under Section 34 of the POCSO Act 2012 is to decide which is the proper Court to try the accused and also sentence him. If the accused is held to be less than 18 years and is a Juvenile, the learned Sessions Judge will lose his power to conduct trial and the Juvenile Justice Board alone is competent authority to try and dispose of the case, in accordance with the said special enactment.</p> <p>Therefore, it is incumbent upon the learned Sessions Judge, who is competent, to pass appropriate order under Section 34 of the POCSO Act, 2012 to pass order deciding whether the accused is a Juvenile' or he has crossed the age of 18 years in order to try him before the Sessions Court. Even, if there is any doubt with regard to the age of the accused and the Court requires some more evidence to resolve the dispute, it can take such evidence and on the</p>
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			<p>basis of that evidence, it has to decide the age of the Juvenile and thereafter only, the Court has to proceed with the merits of the case.</p> <p>The Petition to set aside the order of Session Court was allowed by the Hon'ble Karnataka High Court.</p>
8.	<p><b><i>Bhagwan</i></b> <b>v.</b> <b><i>State of Rajasthan</i></b></p> <p><u>2015 (1) WLN 12 (Raj.)</u></p> <p><b>SANDEEP MEHTA, J.</b></p>	<p>The present revision petition has been filed by the petitioner through his natural guardian - mother Nosar under Sec. 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 challenging the order Dt. 20.10.2014 passed by the learned Sessions Judge, Bhilwara for the release of accused.</p> <p>The prosecutrix and the accused are both of the same age group. They were both intimate and eloped with each other as a result of their affairs. No documentary evidence was collected during investigation to prove the age of the girl. She was found to be between 16 to 18 years of age upon medical examination. She herself boarded the motorcycle being driven by the petitioner and went with him to Bhilwara. From</p>	<p>In the present case, Court relied on the material collected by the Investigating Officer during investigation which illustrates that petitioner and the prosecutrix were having intimate relations from before.</p> <p>It said that the consent of the prosecutrix as being minor is not relevant. However, the fact remains that the petitioner too was a minor at the time of commission of offence. Also, the Probation Officer's report is not adverse to the petitioner. Therefore, Court feels that there are valid and justifiable grounds for directing the release of juvenile to the guardianship of his mother Nosar. Accordingly, the revision petition succeeds.</p>

		Bhilwara, both accompanied with Radheyshyam went to Maharashtra and worked together as laborers in the cotton fields for about 5 days.	
9.	<p><i>The State of Rajasthan v. Manoj Pratap Singh</i></p> <p><u>MANU/RH/0853/2015</u></p> <p><b>GOVIND MATHUR AND JAISHREE THAKUR, JJ.</b></p>	<p>Smt. Kamla (victim's mother) was at her fruit and vegetable cart near R.K. Hospital. Her husband Dharm Das along with her father Madan Lal were also present, when Manoj Pratap Singh (Accused), who used to reside at Housing Board, came on a motor cycle to buy fruit. Present at the site was also her young 8 year old daughter who was mentally challenged having an IQ of 50% with a permanent physical disability of 70%. The accused gave her a chocolate and after a period of ten minutes came back to the stall and took the young daughter away on his motor cycle and went towards Somnath Chauraha. Police arrested the accused and on interrogation it was found out that she is dead. As per medical report, the deceased had head injuries, injuries on her left eye, and injuries on her face, neck, chest, hands, stomach, and</p>	<p>Court heard the witnesses which stated that the deceased had been subjected to great cruelty at the time of committing rape and the subsequent murder thereafter. Doctor who has proved the postmortem report also gave a statement that before the death of the deceased; she was brutally raped and died on account of head injury.</p> <p>Court referred one supreme case i.e. C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, where it has been held <i>that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature, moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. That apart, the proved circumstances must be</i></p>

		<p>back as well as injuries on her private parts.</p> <p>After FIR and investigation, charge-sheet was filed by the police before the competent court and the case was committed to the court for trial for commission of offenses under Sections 363, 365, 376(2)(f) and Section 302, Indian Penal Code as well as under Section 6 of POCSO Act. Special Court of POCSO convicted the accused under the above mentioned offences and awarded capital punishment to the accused.</p>	<p><i>consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.</i> Hon'ble Court in the instant case reached to a conclusion that there is enough circumstantial evidence to link and proves that accused had committed a brutal and heinous crime of rape upon young girl of who was only 8 years old.</p> <p>On the question of awarding capital punishment, court referred the famous case of <i>Bachan Singh v. State of Punjab &amp; Machhi Singh and Others v. State of Punjab</i>, where the supreme court has held that the normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. But if the court finds that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.</p> <p>In the present case, court held that the death sentence is justified as</p>
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			the nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric.
10.	<p><b><i>Sharath Chandra Pottala v. Union of India</i></b></p> <p><u>2014 (2) WLN 410 (Raj.)</u></p> <p><b>DINESH MAHESHWARI AND BANWARI LAL SHARMA, JJ.</b></p>	<p>The petitioner, an accused in Sessions Case said to be pending before the Sessions Judge; Jodhpur District has filed a writ petition seeking some reliefs. Among them, one of the relief is that the Hon'ble Court be pleased to hold the provisions of POCSO ultra vires the Constitution of India. Ground for challenging are :</p> <p>a) Section 34 of POCSO empowers the Special Court under POCSO to determine the age of an accused if question arises over the age of a juvenile accused whereas there is no provision for the accused person to seek determination of age of victim despite there being a valid and sustainable question and dispute over the age of victim and such an anomaly in POCSO creates a serious prejudice for the</p>	<p>Court after giving considerations to the challenges made to the provisions of POCSO Act, that the so-called shortcomings, anomaly or lacuna in the procedure as provided, remain bereft of substance and do not make out a case against the constitutionality of the enactment.</p> <p>Court said that it remains a trite that a statutory provision could be challenged as ultra vires on the grounds either on the legislative competence or if the provision offends any of the provision of the Constitution. Legislative competence is not in question in the present case; and on the submissions as made, it is unable to find any of the constitutional provision being offended by the enactment.</p> <p>It said that POCSO has been enacted for the very special</p>

		<p>accused person.</p> <p>b) A Special Court under POCSO would not have jurisdiction to try an offence when the victim is major and therefore when a dispute or question arises over the age of victim, there ought to be a procedure for deciding the same and denial of such remedy to the accused would be serious infringement of the fundamental right of accused under Arts. 14 &amp; 21 of the Constitution of India.</p>	<p>purpose to protect the children from the Sexual Assaults and Sexual Harassment etc. The procedure has been provided for recording of the statement of the child was also the medical examination of the child in Section 27 in accordance with Section 164-A of Code of Criminal Procedure. Designation of Special Courts for trying the offences under the Act has been made with the provisions overriding even the other special enactments like Information &amp; Technology Act, 2000. Petition was dismissed by the Hon'ble Court.</p>
<b>11.</b>	<p><i>Niranjan Meena</i> v. <i>State of Rajasthan</i>  <u>2014 (3) WLN</u> <u>126 (Raj.)</u>  <b>M.C. SHARMA,</b>  <b>J.</b></p>	<p>Complainant lodged a FIR before Police Station, Mahaveer Nagar, Kota for the offence under Section 363, 376, 342, 354, 120B IPC and Section 4 and 6 of POCSO Act. On the basis of FIR, the investigation was commenced. During investigation, the juvenile delinquent was arrested by the police.</p> <p>Thereafter an application under Section 12 of the Juvenile Justice (Care &amp; Protection of Children)</p>	<p>After hearing the arguments of the counsel for the Juvenile delinquent, Court held that juvenile Niranjan Meena S/o Shri Manfool Meena deserves be released on bail.</p>

		<p>Act, 2000 was filed by the father of the juvenile for custody of the juvenile delinquent. The said application was rejected by the Juvenile Justice Board, Kota. Against the said order the juvenile delinquent preferred an appeal before the Court of Sessions Judge, Kota, but the same was also dismissed. Against the said order, this revision petition has been preferred by Niranjana Meena through his father Manfool Meena.</p>	
12.	<p><b><i>Gangadhar Sethy v. State of Orissa</i></b></p> <p><u>MANU/OR/017 2/2015</u></p> <p><b>VINOD PRASAD AND S.K. SAHOO, JJ.</b></p>	<p>On 12.12.2013 at about 3.40 p.m., the accused called the victim who was aged about five years to his house. The victim accompanied the accused to his house. He committed rape on the victim for which the victim cried and came out of the house of the accused. At that time the wife of the informant marked semen stains over the private parts as well as on the thighs of the victim. She informed him about the incident for which the informant returned back home and found the incident to be true and accordingly he</p>	<p>Court adverted over the age of the victim girl at the time of incident since for attracting the ingredients of offence under section 4 of POCSO Act which deals with punishment of penetrative sexual assault, the victim must be a child as per the definition of "child" provided under section 2(d) of the POCSO Act which indicates that "child" means any person below the age of eighteen years and also because section 376(2)(i) of Indian Penal Code will be attracted only when the rape is committed on a woman when she is under sixteen</p>

		<p>lodged the FIR. After completion of investigation, submitted charge-sheet against the appellant under Section 376(2)(f) read with Section 4 of the POCSO Act.</p>	<p>years of age. After looking into the evidences the court is satisfied that the victim was within the age group of five to seven years and thus one of the ingredients of both the offences i.e., section 376(2)(i) IPC and section 4 of POCSO Act regarding age is satisfied.</p> <p>On the question of offence of rape or penetrative sexual assault on the victim, Court looked into the medical examination which suggested that the victim was a nubile virgin on the date of her examination and there was no evidence to corroborate recent or past sexual intercourse. No injuries present on her person or in or around her private parts. Report further shows that the victim was a girl child aged about six years and her hymen was intact and no penetrative test was done during the examination. Court held that none of the ingredients of Section 3 of POCSO Act is satisfied in this case. Therefore it cannot be said that section 4 of POCSO Act which deals with punishment of penetrative sexual assault is attracted. Similarly in absence of</p>
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			<p>any statement of the victim that she was raped by the appellant or in absence of any corroborative medical evidence, it would not be proper to convict the appellant under section 376(2) (i) IPC.</p> <p>Court took a view that materials available on record shows the assault has been made on the private parts of the victim and the ingredients of the offence under section 8 of the POCSO Act is also clearly made out. Therefore, the court said that the conviction of the appellant under section 376(2)(i) of IPC is not sustainable in the eye of law and accordingly the same is set aside and instead he is convicted under section 354 of IPC. Similarly the order of conviction of the appellant under section 4 of POCSO Act is set aside and instead he is convicted under section 8 of POCSO Act.</p>
13.	<p><i>Letha J.</i></p> <p>v.</p> <p><i>State of Kerala</i></p> <p><u>2015 (1) KHC</u></p> <p><u>234</u></p>	<p>On the basis of some alleged 'media reports in a section of the Press on 12.06.2014', the Child Welfare Committee, Wayanad (hereinafter referred to as 'the CWC, Wayanad') has suo motu registered a case on the alleged</p>	<p>Court found out this case as a classic example and a fine illustration to note down the gross illegalities being committed by the CWCs without knowing as to what they are and what are their powers are, and as to how recklessly they</p>

	<p><b>B. KEMAL PASHA, J.</b></p>	<p>sexual assault on girl students in Government Technical High School at Dwaraka, Mananthavady. It is alleged that the 1st accused Anil Kumar K.V., who was a Draftsman Gr.II of the said School, had sexually assaulted and harassed the girl students of the said School repeatedly for a long period. On 12.06.2014, the CWC, Wayanad has directed the head of the institution to submit a detailed report along with it.</p>	<p>are exercising powers, which are not even conferred on them. It seems that in this particular case, the CWC, Wayanad has crossed over all the limits and has committed gross illegality in passing such an order. It said that there is no allegation against these petitioners that they have ever committed sexual assault on a child in that institution. Also there are no allegations against any of these petitioners that they have committed any such acts as contemplated under Section 9(1) of the POCSO Act.</p>
14.	<p><i>Ramrahit Singh v. Dhananjay Singh and Ors.</i></p> <p><u>MANU/WB/021 8/2015</u></p> <p><b>SHIB SADHAN SADHU, J.</b></p>	<p>The petitioner on 20.05.2013 went to his native place in Bihar keeping his two minor sons and the minor daughter aged about 13 years 4 months 16 days (victim girl) in his house. Taking advantage of his absence his neighbour's son Dhananjay Singh aka Motu trespassed into his house in the night and committed rape upon his minor daughter on 21.05.2013, 24.05.2013 and 28.05.2013 under threat to kill her and her minor brothers. In the night on 28.05.2013 around 12.30</p>	<p>Court after conjoint reading of the provisions i.e. Section 6, 28, 31, 33 &amp; 42-A of the Act clearly spells out that cognizance of an offence under the Act without any order of committal or trial can be taken by the Special Court on a complaint disposing facts, which constitute such offence, or upon a police report on such facts. Such being the position, where the Special Court is empowered to take cognizance of the offence on a complaint or police report on facts constituting an offence under the</p>

		<p>hours the complainant returned home and saw the accused fled away from his house. His daughter (victim girl) narrated the incident to the petitioner and his wife.</p> <p>FIR was lodged, investigation was conducted and charge sheet was submitted against the accused under Section 6 of the POCSO Act and under Section 506 of the IPC.</p> <p>The revision petition has been filed in Calcutta High Court praying that the order passed by the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Burdwan dismissing the revision and affirming the order passed by the Learned Additional Chief Judicial Magistrate, Asansol in respect of granting of bail of the be quashed and set aside.</p>	<p>Act, the Judicial Magistrate has no jurisdiction to entertain and consider the application for bail moved by any accused proceeded for an offence under the Act. The Act does not interdict the Magistrate in passing the order for the first remand of an accused suspected and prosecuted for an offence under the Act, the accused being produced before him since he is empowered under Section 167 of the Cr.P.C. to do so. However, he has no jurisdiction to pass any subsequent order of remand and to entertain or to consider any application of bail filed by such accused and that can only be done by the Special Court. Therefore, Court reaches to a conclusion that there remains no scope for harboring even the slightest doubt to accept the legal proposition that under the POCSO Act only the Special Court has been singularly vested with all the powers to try an offence under the Act and to entertain and consider application for bail filed by the accused and to deal with any incidental matter thereto including</p>
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			the power of detention and remand of the accused.
15.	<p><i>P. Shanmugavel Raj v. State and Ors.</i></p> <p><u>2015 (1) Crimes 536 (Mad.)</u></p> <p><b>P.N. PRAKASH, J.</b></p>	<p>A thirteen year old child was subjected to sexual assault by Accused 1 and a case in Tirunelveli All Women Police Station was registered by the Inspector of Police for offences under Sections 376, 109, 506(ii) I.P.C. and Section 5(1)(D) of Immoral Traffic (Prevention) Act, 1956 and Section 4 of POCSO Act. After completing the investigation, the respondent police filed a final report against three accused for offences under Section 376(2) I.P.C., Section 4 of POCSO Act r/w. 109 I.P.C. and Section 5(1)(d) of Immoral Traffic (Prevention) Act, 1956. This case was filed before the Sessions Court (Manila Court), Tirunelveli. The final report was filed directly before the Special Court (Mahila Court), Tirunelveli and it appears that there was no committal proceeding in view of Section 33(1) of POCSO Act which empowers the Special Court to take cognizance without committal proceedings.</p>	<p>According to the Hon'ble Court, from a bare reading of Section 28 of the POCSO Act, the Parliament has conferred powers on the State Government to designate a Court of Sessions to be a Special Court to try the offences under the Act. In other words, POCSO Act does not empower the State Government to constitute or create new Courts under the Act, but only empowers the State Government to designate in each District a Court of Sessions to be a Special Court to try the offences under the Act. By telescoping one provision into another, that is, by telescoping the proviso to Section 28(1) of POCSO Act into proviso (a) of Section 25 of the Commissions for Protection of Child Rights Act, 2005 and reading it with G.O.Ms. No. 241, it is crystal clear that the Mahila Court in Tirunelveli has the jurisdiction to try the offences in question. On question whether the the Special Public Prosecutor in the Mahila Court in Tirunelveli is</p>

		<p>Thereafter, Accused-1 filed the aforesaid application contending that Tmt. B.R. Mehala is not competent to conduct the trial before the said Court as she was not appointed under Section 32(1) of the POCSO Act. The trial Court dismissed the application by a well considered order. Aggrieved by which, the first accused is before this Court by way of this Criminal Revision Petition.</p>	<p>competent to conduct the present prosecution. Court held that Section 32(1) of the POCSO Act casts a duty upon the State Government to appoint Special Public Prosecutor for every Special Court for conducting cases under the provisions of the POCSO Act. The State Government cannot abdicate its duty by not appointing sufficient number of Public Prosecutors, because trial under the POCSO Act should not get unnecessarily delayed on account of the failure of the State Government to appoint Special Public Prosecutors. Only to achieve this end, Parliament in its wisdom has cast a statutory duty on the State Government to appoint Special Public Prosecutors so that prosecutions do not suffer for want of Prosecutors. This does not mean that the trial before the Mahila Court should be conducted only by a Special Public Prosecutor appointed under Section 32(1) of the POCSO Act, because Section 31 of the POCSO Act clearly states that the Special Court shall be</p>
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			deemed to be a Court of Sessions and the person conducting the prosecution shall be deemed to be a Public Prosecutor.
16.	<p><b><i>K. Muthu Mariappan v. The State</i></b></p> <p><u>MANU/TN/1611/2015</u></p> <p><b>S. NAGAMUTHU, J.</b></p>	<p>Victim's families were residing at Kombuthurai in Kayalpattinam. She was hardly fifteen years old at the time of occurrence. She was studying 11th standard and at that time accused became acquainted with her. During the month of December 2013, on account of her ill-health, she stopped her studies. On 15.02.2014, during night hours, she had gone to a church situated in the village. The accused met her near the church and expressed his desire to marry her. He also requested her to come on the next day at 06.00 AM to Mudiappar Temple in the same village. Accordingly, when she went there, the accused took her in a bus to Chennai. The accused took her to a rented house, which was in his occupation. He gave promise to her that he would marry her. On that day, the accused attempted to have sexual intercourse with her. But, she</p>	<p>In order to attract any offence under the provisions of the POCSO Act, it should be proved by the prosecution that as on the date of the commission of the crime, she was a child. The term "child" has been defined in Section 2(d) of the Act, which states that child means any person below the age of 18 years. Thus, for the purpose of the offence of kidnapping as well as for any offence under the POCSO Act, the age of victim should be proved to be below 18 years as on the crucial date.</p> <p>The Court decided as to whether the act of the accused in having sexual intercourse with victim would fall under Section 4 or Section 5(1) r/w Section 6 of the Act. Court looked into the term "penetrative sexual assault" which has been defined in Section 2(f) of the POCSO Act, which states as follows: -- "penetrative sexual assault has the same meaning as</p>

		<p>declined to give consent. With a view to get consent from her, the accused told her that since he was surely going to marry her, there was nothing wrong in having sexual intercourse with him. By giving such assurance, the accused had repeated sexual intercourse with her. When her mother could not locate her, she proceeded to the Arumuganeri Police Station to make a complaint. Case was registered after finding the accused under Section 366(A), 376 of the Indian Penal Code and Section 4 of the POCSO Act. Trial Court has convicted him under the said offences. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.</p>	<p>assigned to it in Section 3. Whereas Section 5(1) of the POCSO Act which deals with aggravated penetrative sexual assault reads as follows: "whoever commits penetrative sexual assault on the child more than once or repeatedly is said to commit aggravated sexual assault".</p> <p>Court got into the gravity of both offences i.e. Section 3 &amp; 5 that which of them is a major offence. The aggravated penetrative sexual assault, which is made out of several particulars, includes a mere penetrative sexual assault, which is made out of some of those particulars. Therefore, there can be no difficulty in holding that the Sections 4 and 6 read with Section 5(1) of the POCSO Act are cognate offences and Section 4 of the POCSO Act is a minor offence to Section 6 r/w Section 5(1) of the POCSO Act.</p> <p>To bring clarity to above conclusion, Court also gone into punishment as provided under these penal provisions. Though the maximum punishment awardable under Section 4 as well as Section</p>
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			<p>6 is imprisonment for life with fine, the minimum punishment provided in Section 4 of the POCSO Act is imprisonment of either description for a term which shall not be less than seven years, whereas the minimum punishment provided under Section 6 of the POCSO Act is rigorous imprisonment for a term which shall not be less than ten years. The term "imprisonment" under Section 4 of the POCSO Act may be of either description, viz., either rigorous or simple, whereas under Section 6 of the POCSO Act, the term imprisonment shall be only rigorous. From these ingredients, it can be noted that in the matter of punishment also, Section 4 of the POCSO Act is minor to Section 6 of the POCSO Act.</p> <p>It also hold that the conviction of the appellant under Section 4 of the POCSO Act, though the appellant stood charged under Section 6 r/w Section 5(1) of the POCSO Act and there was no charge under Section 4 of the POSCO Act, it is not illegal and so the same is liable to be confirmed.</p>
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17.	<p><i>Iqbal</i> v. <i>State of H.P.</i></p>		
	<p><u>MANU/HP/0180</u> <u>/2015</u></p> <p><b>PIAR SINGH</b> <b>RANA, J.</b></p>	<p>Present petition is filed under Section 439 of the Code of Criminal Procedure 1973 for grant bail in connection with FIR registered under Sections 363, 366, 376 IPC and under Section 4 of Protection of Children from Sexual Offences Act 2012 at Police Station Zhakari District Shimla HP. There is recital in police report that Kalam Singh came in Police Station along with his wife Sita Devi and filed criminal report that on dated 26.10.2014 at about 9 AM prosecutrix went to stitching centre Jeuri and thereafter prosecutrix did not come to her residential house. As per birth certificate of the prosecutrix the age of the prosecutrix is 16 years and one month. There is recital in police report that petitioner Mohamad Iqbal kidnapped the prosecutrix at Jammu on the pretext of marriage and has kept the prosecutrix as his wife and had committed sexual intercourse with her and if the petitioner is released on bail then petitioner</p>	<p>There is apprehension in the mind of the Court that if the petitioner is released on bail at this stage then petitioner will induce and threaten the prosecution witness. Court is of the opinion that it is not expedient in the ends of justice to release the petitioner on bail at this stage. Hence In view of the above stated facts bail petition filed under Section 439 of the Code of Criminal Procedure 1973 is rejected. Observation made hereinabove is strictly for the purpose of deciding the present bail petition and it shall not affect merits of the case in any manner. Bail petition was disposed of in the instant case.</p>

		would create obstruction in the trial of the criminal case.	
<b>18.</b>	<p><b><i>Sachin</i></b> <b>v.</b> <b><i>State of H.P.</i></b></p> <p><u>MANU/HP/1301</u> <u>/2014</u></p> <p><b>PIAR SINGH</b> <b>RANA, J.</b></p>	<p>In this case there were FIRs and both are contradictory to each other. It is further pleaded that as per one FIR occurrence took place at Hotel Monal Mandi and as per other FIR occurrence took place in the house of prosecutrix at Dharampur which is approximately at a distance of 90 Kms. and hence prosecution story did not inspire any confidence. In view of contradictory statements of both prosecutrix no offence under IPC and POCSO Act is made out. It is pleaded that neither identification of accused persons established nor any test identification parade was conducted.</p>	<p>Court is of the opinion that in view of gravity of offence against the applicants under Section 376D IPC i.e. gang rape and in view of allegations of criminal offence under Sections 6 and 17 of POCSO Act 2012 i.e. aggravated penetrative sexual assault upon minor prosecutrix it is not expedient in the ends of justice to release the applicants on bail at this stage. Court is also of the opinion that if applicants are released on bail at this stage then trial of case will be adversely effected and there is apprehension in the mind of Court that if applicants are released at this stage then applicants will induce and threat the prosecution witnesses</p> <p>At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation</p>

			(v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State.
19.	<p><i>Sahil Thakur</i></p> <p>v.</p> <p><i>State of Himachal Pradesh</i></p> <p><u>MANU/HP/0527</u></p> <p><u>/2015</u></p> <p><b>TARLOK SINGH CHAUHAN, J</b></p>	<p>In this case petitioner and the prosecutrix are studying in one institute. She went along with the petitioner and they were also accompanied by Rajat, Nitika and the vehicle belonged to one Harshav Thakur. On 26.4.2015, all four of them stayed at a hotel at Solan (Oachghat) and then they went to Chandigarh and thereafter stayed in the same room where the petitioner is alleged to have made forcible physical contact with the prosecutrix. The prosecutrix made no grievance but later on claimed that she had not only been kidnapped but had been offered a drink which had been laced with some drug, as a result whereof, she was remained unconscious and the petitioner took advantage of this fact and forcibly established physical contact with her.</p> <p>The petitioner has approached this Court for grant of bail under Section 439 CrPC.</p>	<p>Court held that the object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. However, this detention is not supposed to be punitive or preventive. On the basis of the record, it cannot be said that the petitioner would in any manner impede the course and cause of justice or that the petitioner may in any manner hamper the free, fair and full investigation. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail on the following terms and conditions: (i) The petitioner shall furnish bail bonds in the sum of ` 50,000/- with one surety of the like amount to the satisfaction of any Judicial Magistrate 1st Class, stationed at Rohru, District Shimla, H.P.; (ii) the petitioner shall fully co-operate with the investigation as and when required by the Investigating Agency; (iii) the</p>

			petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer; (iv) the petitioner shall not tamper with the prosecution evidence or threaten the witnesses; (v) the petitioner shall not leave the country without prior permission of the Court; (vi) the petitioner shall not misuse his liberty in any manner.
20.	<p><i>Pranil Gupta</i> v. <i>State of Sikkim</i></p> <p><u>MANU/SI/0035/2015</u></p> <p><b>MEENAKSHI</b> <b>MADAN RAI, J.</b></p>	<p>The incident took place between 03.05.2013 to 06.05.2013. The Victim aged about 14 years, a student of "Rimbi School" in West Sikkim was known to the Appellant, Pranil Gupta, a truck driver working at the construction site. He was living in a room on the ground floor of one "Hotel Mt. Simvo" at Pelling, West Sikkim. On 03.05.2013 the Victim went to Pelling to purchase a birthday cake taking along with her her friend. The Victim, at Pelling called the Appellant, he then directed the</p>	<p>Rejecting the contention of appellant that it was a consensual act and they were having a love affair, the Court looked into Section 375 of IPC, which indicates that when the offence of rape has been committed, the consent of the victim under 18 years of age is irrelevant. Similarly, for an offence under POCSO Act, 2012 which is a more stringent Act, the consent of the child would be of no consequence, as she is protected by the provisions of law. Court agrees that the Victim herself went along</p>

		<p>Victim to go to Pelling School ground, where she would be met by his sister-in-law. Following the instructions, the Victim and her friend went to the designated place where they met the lady and were taken to her room, also situated on the ground floor of Hotel Mt. Simvo. The Appellant, on reaching the place asked the Victim's friend to return home while he kept the Victim in his room and had sexual relations with her.</p> <p>Victim's family reported the case to police, then the learned Trial Court finding prima facie materials against the Appellant, framed charges under Section 4 of the POCSO Act, 2012 and under Section 363 of the Indian Penal Code, 1860 and convicted him under the same offences. Appeal against the judgment of special court has been made in this Hon'ble Court.</p>	<p>with her friend to Pelling to meet the accused and she stayed with the accused with her own will. But for an offence under Section 3 of the POCSO Act, 2012 the consent of a minor is irrelevant.</p> <p>It must also be borne in mind that Section 30(2) of the POCSO Act, 2012 requires that a fact is stated to be proved for the purposes of Section 30(1), only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. It has also been clarified that "Culpable Mental State" includes intention, motive, knowledge of the fact and the belief in or reason to believe a fact. Thus, mere denial of the offence U/S 313 of the CrPC. by the accused will not suffice, he has to establish lack of mens rea beyond a reasonable doubt.</p> <p>Lastly, Hon'ble High Court agreeing with the Judgment of the Learned Trial Court upheld the conviction of the accused.</p>
21.	<i>State (Govt. of NCT of Delhi)</i>	Victim was working at the tools shop of him maternal uncle. It	Court held that Prosecution has set up a case that accused had

	<p>v. <b><i>Mullah Muzib</i></b> <u>MANU/DE/0383</u> <u>/2015</u> <b>G.S. SISTANI</b> <b>AND SANGITA</b> <b>DHINGRA</b> <b>SEHGAL, JJ.</b></p>	<p>was alleged that about 6-7 months ago, when he was sleeping in the parking, accused Mullah Muzib, who ran puncture shop, took him below a tree and asked him to sleep underneath a tirpal, thereafter, he put off his pant and when he refused, accused threatened him by stating to remain laid silently and thereafter he put off his pant and half pant of the victim and inserted his penis in his anus, he felt pain. Thereafter, accused asked him not to disclose the incident anyone otherwise he would kill him. Accused repeated the same acts 2-3 times after the first incident. It was further alleged that on October 27, 2013 at about 10 PM when he went to public toilet to ease himself, accused followed him and entered the toilet and thereafter he bolted the door from inside. It was alleged that accused put off his pant and thereafter committed same act in the same manner in which he committed earlier. Victim informed his maternal uncle and Tausif at whose shop he was working,</p>	<p>committed carnal intercourse with the victim several times. Medical report did not find any external injury on the body of patient. On examination, it was clear that prosecution has failed to produce any medical evidence which may even suggest that the victim was sexually assaulted.</p> <p>Also, no injury was found at the male organ of accused. Mere fact that accused was found capable to do intercourse, in the absence of any other evidence, is itself not sufficient to draw an adverse inference against the accused.</p> <p>Court referred some case laws, like in Phool Singh v. State 2011 (3) JCC 2235, it was held that the prosecution case did not corroborate with the medical evidence. Hence the conviction of the accused was set aside.</p> <p>Hon'ble High Court agree with the view taken by the learned Trial Court that prosecution has failed to produce cogent evidence against the accused and is not sufficient to convict him.</p>
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22.	<p><i>Jongi</i> v. <i>State</i></p> <p><u>2014 (4) JCC</u> <u>2922</u></p> <p><b>PRATIBHA RANI,</b> <b>J.</b></p>	<p>It was winter when the accused called the victim for giving potli about 2-3 months back. She went to play near Shivaji Stadium, when the accused came to her and asked to accompany him for getting potli back. He took her to gali, there he kissed her and also hurt her on cheek with small knife and asked to take off her underwear. Further, the accused had taken off her blouse and had caressed her chest. When she cried and shouted. The accused was apprehended by public persons and he then ran away.</p> <p>Based on the report, trial Court convicted him under Section 354 of IPC and Section 9 of POCSO Act, 2012. Against that order, appeal is preferred.</p>	<p>Looking into the facts and circumstances and the material emerging on record, Court found out that the act of the Appellant i.e. lifting shirt of the child victim, can be termed as a case of sexual harassment. Thus, the offence proved against the Appellant is under Section 11 of <b>POCSO</b> Act, which is punishable under Section 12 of the said Act and provides imprisonment of either description for a term which may extend to three years and shall also be liable to fine.</p>
23.	<i>Chandrika</i>	In premises No. 16/1069 E Block,	From the evidences placed before

	<p><b><i>Prasad</i></b> <b>v.</b> <b><i>State</i></b></p> <p><u>MANU/DE/0712</u> <u>/2015</u></p> <p><b>S.P. GARG, J.</b></p>	<p>Khalsa Nagar, Tank Road, Karol Bagh, Delhi, 'X' (assumed name), aged 10 years, was sexually assaulted by the appellant and he outraged her modesty. The incident was reported to the police. After completion of investigation, a charge-sheet was filed against him in the court. Trial Court convicted him. Aggrieved by a judgment of trial court where the accused was held guilty for committing offences under Sections 354 IPC and Section 10 of POCSO Act, appeal was preferred in the instant case.</p>	<p>the Court, it emerges that in the absence of her uncle who had gone to his native village, 'X' used to visit the shop after return from school to enable his father to go to house to take lunch. The accused who worked as security guard in a godown situated in front of the shop took advantage of the absence of 'X's father and touched her various body parts in the shop. He abused the child for about 15 to 20 days before the incident. On a day when 'X' declined to go to the shop and on inquiry for her reluctance to go, she revealed the incident.</p> <p>Hon'ble High Court held that the impugned order of the trial court based upon fair and proper appreciation of the evidence and deserves no interference of the Court. The accused was rightly convicted.</p>
<p><b>24.</b></p>	<p><b><i>Vinod Kumar</i></b> <b>v.</b> <b><i>State</i></b></p> <p><u>MANU/DE/3515</u> <u>/2014</u></p>	<p>The Appellant was bed roll boy in Brahamputra Mail in the Compartment in which the Complainant along with her daughter was travelling on berth No.36 and 42. At about 4.00 am, while she was sleeping, she felt</p>	<p>The court in the present case observed that any question that involves 'sexual intent' shall be a question of fact. Section 9 of POCSO Act deals with aggravated sexual assault, which is punishable under Section 10 of the said Act.</p>

	<b>PRATIBHA RANI, J.</b>	that somebody was touching her body. She got up and tried to awake her mother by calling her and shaking her but her mother was in deep sleep. Thereafter, complainant no.1 left for washroom and the appellant followed her to the washroom and tried to stop her in the way. The complainant came back running towards her birth and started crying when her mother woke up. This resulted in apprehension of the Appellant and registration of FIR against him. An appeal has been filed by the Appellant Vinod Kumar impugning his conviction under Section 10 of Protection of Children from Sexual Offence Act, 2012 and has been sentenced to undergo RI for five years with fine of Rs.2000/- and in default of payment of fine, to undergo SI for 15 days for committing the offence.	In order to ascertain as to under which Section the act committed by the Appellant falls, it is necessary to refer to Section 11 of the said Act which particularly states that ‘--A person is said to commit sexual harassment upon a child when such person with sexual intent,-- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means.’
25.	<i>State v. Sonu Kumar Yadav</i>	Smt.Yashoda, the Complainant. alongwith her daughter aged about 6 years was purchasing spices from Gupta Masala Wala. When she was busy in shopping,	Legal position is well settled that the Appellate Court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The

	<p><u>MANU/DE/3141</u> <u>/2014</u> <b>PRATIBHA RANI,</b> <b>J.</b></p>	<p>at about 8.30 pm, one boy came and pressed the mouth of her daughter and started running alongwith her. She happened to see him and raised alarm. The public persons caught that boy and on inquiry the name of that boy was revealed as Sonu Kumar Yadav, resident of Gulabi Bagh Patri, who had been given beating by the public persons. Somebody had informed the PCR and Sonu Kumar Yadav had been handed over to the police. The shopkeeper Sh. Chetan stated that he knew the Complainant as she used to visit his shop for purchasing items but he denied any incident having taken place on 14.06.2013 or any hue and cry being heard by him.</p>	<p>trial court judgment cannot be set aside merely because the Appellate Court's view is more probable. The Appellate Court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law. In the case of <i>State of U.P. vs. Nandu Vishwakarma</i> ,it was observed that 'when on the basis of the evidence on record two views could be taken - one in favour of the accused and the other against the accused - the one favouring the accused should always be accepted'.</p>
<p><b>26.</b></p>	<p><i>State</i> <i>v.</i> <i>Shambhu</i>  <u>2015 (1) JCC</u> <u>611</u>  <b>PRADEEP</b> <b>NANDRAJOG</b></p>	<p>The prosecutrix who came to live with her maternal grand father in village Issapur, Delhi went missing on December 30, 2012. When despite search the maternal grand father could not trace her missing report was lodged on December 31, 2012 resulting in institution of FIR under Section</p>	<p>Indubitably a victim of rape is not an accomplice and conviction can be based on her sole testimony without any corroboration if the same inspires confidence. But the MLC and the FSL report do not corroborate the version of the prosecutrix in the recent case There must be some additional</p>

	<p><b>AND MUKTA GUPTA, JJ.</b></p>	<p>363 IPC. Efforts were made to trace the prosecutrix. Subsequently on information received it was revealed that the prosecutrix was at Mohangarh, Jaisalmer, Rajasthan with Shambhu the respondent. She was recovered from hotel Sangam, Jaisalmer, Rajasthan on January 04, 2013 and both the prosecutrix and Shambhu were brought to Delhi on January 05, 2013. Statement of prosecutrix was recorded wherein she stated that she was in love with the respondent and voluntarily accompanied him. They first went to Faridabad and then to Jaisalmer. The respondent had committed vaginal and anal intercourse with her against her consent. Thus, Sections 376 and 377 IPC were also added and the prosecutrix was medically examined. Her statement was recorded under Section 164 Cr.P.C. wherein she stated that she was having friendship with the respondent and had gone to stay with him of her own free will and both of them had anal</p>	<p>evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.</p>
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		intercourse only once and that was also with her consent and without any force. The MLC of the prosecutrix revealed that her hymen was intact and no injury was seen in Vulva, Labia majora, Labia manora, Perennial region and anal region. All the regions were found normal and without any bleeding, scar or bite marks.	
27.	<p><i>State</i> v. <i>Pulkit Choudhary and Ors.</i></p> <p><u>201(1) JCC 610</u></p> <p><b>PRADEEP NANDRAJOG AND MUKTA GUPTA, JJ.</b></p>	<p>On September 15, 2012 the prosecutrix had a quarrel with her parents. She left her house and stayed for a few days with her friends. She contacted her friend Amit on facebook and stayed with him for two days. Thereafter Amit sent her to his friend's place whose name was Pulkit. Initially Pulkit was not aware that she had left her home on her own but when he came to know about this, he committed rape on her. As parents of Pulkit were expected to come back, he asked her to stay at another place for two-three days. He told her that he had taken her video film and in case she did not obey, the same will be put on the internet. Pulkit stated to her that</p>	<p>The Court observed that the prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.</p>

		<p>he was an Inspector in Delhi Police and would implicate her in a false case. Thereafter again she stayed at the house of Ankit. However, she was picked up by the Police on November 27, 2012. Even on cross-examination she failed to identify any of the respondents as the accused persons who committed rape on her on different occasions. During the cross examination, nothing has been highlighted of the prosecutrix that she was deposing under the fear of the respondents or any other material placed to connect the respondents to the offences alleged. Therefore an appeal has been files on the basis that the acquittal was unjustified and a perverse order has been passed by the learned Trial Court which is required to be rectified by this Court.</p>	
28.	<p><i>State of NCT of Delhi</i> v. <i>Rashid</i>  <u>MANU/DE/0352</u></p>	<p>The complainant, father of the victim on 16.12.2012 he had sent his nephew aged about 9 years and his daughter aged about 6 years to the opposite block to deliver food to his sister and at</p>	<p>The Hon'ble judge observed that the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial</p>

	<p><u>/2015</u></p> <p><b>G.S. SISTANI AND SANGITA DHINGRA SEHGAL, JJ.</b></p>	<p>about 10:45 PM his nephew returned home and informed the complainant that his daughter was caught by one boy in the stairs who pulled down her pyjama and was doing 'chera khani' with her. The complainant rushed downstairs and apprehended the said boy at the distance of about 200mts. A call was made to the PCR, FIR was got registered under section 376 IPC read with section 4 of the POCSO Act, victim was medically examined and accused was arrested. On completion of investigation, charge sheet was filed. Thereafter charges against the accused were framed under section 376(2) (f) IPC read with Section 4 and 6 of the POCSO Act.</p>	<p>and presumption of innocence, which are the twin essentials of administration of criminal justice. The Apex Court in Govindaraju @ Govinda Vs. State &amp; Anr. Court has discussed A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence. Further in case if there is no compliance of section 157 of Code of Criminal Procedure and there is inordinate delay in recording the statements of witnesses u/s 161 of Code of Criminal Procedure proof should be established beyond reasonable doubt.</p>
<p><b>29.</b></p>	<p><b><i>Basanti</i></b> <b>v.</b> <b><i>State</i></b></p>	<p>Prosecutrix got married to a person namely Imran about three months prior to this incident. She</p>	<p>Considering all the facts and circumstances of the case, Court found it to be a fit case to enlarge</p>

	<p><u>2014 (3) JCC</u> <u>2069</u></p> <p><b>PRATIBHA RANI,</b> <b>J.</b></p>	<p>stayed with her in-laws for about two months and on 21.04.2014 she returned to her parental home. Since her parents wanted her to be sent to her matrimonial home, she left her parental home about three days prior to this occurrence. The Complainant further stated that during day time, she used to spend time in Ashok Park and at night, she used to sleep at 'Mazaar' of 'Peer Baba'.</p> <p>The Applicant who is seeking a bail in the instant case is a lady named Basanti. She met prosecutrix near bank of river Yamuna. Basanti questioned her as to the nature of the job she was doing. On being informed that she was doing nothing, Basanti took her to a newly constructed house in Toba Colony on the pretext of providing job. Three boys were present there and she had seen them earlier also. There they had cold drinks. The remaining allegations regarding outraging her modesty and committing rape on her have been made against</p>	<p>the Applicant on bail. Accordingly, it directed that Applicant be released on bail on her furnishing personal bond in the sum of Rs. 25,000/- with one local surety in the like amount to the satisfaction of learned Trial Court, subject to the condition that the Applicant shall not try to contact the Complainant in any manner whatsoever.</p>
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		<p>the co-accused persons.</p> <p>Allegations of abetment to commit rape have been leveled against her in the FIR registered under Section 376-D/109 IPC &amp; under Section 6 of POCSO Act, PS New Friends Colony, Delhi. and therefore applicant is seeking bail in the instant case by filing an application under Section 439 CrPC.</p>	
30.	<p><i>Juyal</i></p> <p>v.</p> <p><i>State</i></p> <p><u>2014 (3) JCC</u></p> <p><u>1867</u></p> <p><b>PRATIBHA RANI,</b></p> <p><b>J.</b></p>	<p>On 16th July, 2013 at about 3.30 p.m. her daughter who was aged about 15 years and a student of 10th standard, left home for going to the tuition and had not returned thereafter.</p> <p>FIR was registered on the statement of Smt. Taslima, mother of the victim under Sections 363/367 of IPC &amp; Section 4 POCSO Act.</p> <p>During investigation, when she was produced before the M.M for recording her statement, she stated that she was in love with Faizan (Petitioner). She had physical relationship with the above named person of her own free will and was pregnant having</p>	<p>In the present case, Court observed that when statement of victim were recorded under Section 161 CrPC, she named her Jeeja, the petitioner, to be the person with whom she had physical relationship and became pregnant. But she did not name the petitioner when she was produced for getting her statement recorded under Section 164 CrPC.</p> <p>After looking into the entire facts and circumstances, court said that it would be a subject matter of trial and as to which of her statement is correct and looking into the nature of the allegations made against the petitioner, Court directed that the</p>

		<p>pregnancy of 45 days. She also stated before the learned M.M. that she left the house of her own and though the accused wanted to drop her back to her house on the same day, she insisted to stay with him. She was dropped near her house on the next date. She was categorical in making statement that nobody had kidnapped or enticed her away. Petition has been filed for seeking bail in the instant case.</p>	<p>petitioner be released on bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court.</p>
<b>31.</b>	<p><b><i>Ravinder Kumar</i></b> <b>v.</b> <b><i>State</i></b>  <u>2014 (2) JCC</u> <u>1210</u>  <b>MUKTA GUPTA,</b>  <b>J.</b></p>	<p>Petitioner has file the petition in the instant case to quash the FIR which was registered under Sections 354/451/323/34 I.P.C. &amp; Section 12 of POCSO Act on the ground that parties have settled the matter.</p> <p>Victim's father on his behalf and on behalf of minor stated that the matter has been settled between the parties as per the deed of settlement dated 31st March, 2014. The settlement has been arrived of their own free will, volition, without coercion and seeing the overall welfare and</p>	<p>Court held that In view of the fact that the parties have amicably resolved their differences of their own free will, volition and without any coercion and no useful purpose will be served in continuance of the proceedings, rather the same would create further acrimony between them, it would be in the interest of justice to quash the abovementioned FIR and the proceedings pursuant thereto. There is no legal impediment in quashing the FIR in question.</p>

		interest of the minor. As the Petitioner has undertaken to abide by the terms of settlement, Victim's father and the complainant do not wish to pursue the abovementioned FIR and the proceedings pursuant thereto.	
32.	<i>Sachinder v. State</i>  <u>2015 (2) JCC 794</u>  <b>SUNITA GUPTA, J.</b>	An application is filed by the accused (appellant) under 389 CrPC seeking suspension of his sentence during the pendency of the appeal. He was charged under Section 323/354/376 of IPC and 4/6/8/12 of POCSO Act.  The appellant was convicted under Section 6 & 8 of POCSO Act by the special Court but it is argued that based on the evidences; these sections are not at all attracted.	In the instant case, Court agrees with the submissions of the learned counsel for the appellant that there was no allegation of inserting fingers by the appellant in her vagina when the statement of the prosecutrix were recorded under Section 164 CrPC. Court looks into the Statement of PW12-Dr. Nivedita Raizada who deposed that she did not find any evidence of finger having been inserted as she did not find any redness or rashes or marks on the vaginal part.  Based on this Facts and Circumstance, the Court held that the sentence of the appellant is suspended during the pendency of the appeal subject to his depositing fine.
33.	<i>The State of Maharashtra</i>	This is an appeal in the Bombay High Court against the judgment	Court in the instant case held that the offence committed by the

<p><i>and Ors.</i></p> <p>v.</p> <p><b>Viran Gyanlal Rajput and Ors.</b></p> <p><u>2015 (2) BomCR (Cri) 102</u></p> <p><b>V.K. TAHILRAMANI AND I.K. JAIN, JJ.</b></p>	<p>and order of Additional Sessions Judge who convicted the accused for the offence punishable under Section 302 of the IPC and sentenced him to capital punishment of death. By the very same Judgment and Order, accused was also convicted under Section 366 IPC, Sections 10 and 4 of the POCSO Act, 2012.</p> <p>The Facts in the present case are like this that on 17/10/2012; victim girl aged about 13 ½ year old had been to her school. In the evening, she did not return home. On 17/10/2012 in the evening, PW4 saw victim girl coming alone and saw one unknown person wearing red t-shirt following the victim girl. During interrogation, he had shown the place where dead body of victim girl was found lying there in naked condition with odhani/scarf tied around the neck. Post-mortem report found that deceased was forcibly subjected to sexual intercourse. The samples of pubic hair, semen and blood of the accused were also collected by the Medical Officer.</p>	<p>accused had not been committed on the spur of moment. It was pre-planned. Accused took away the victim girl to a secluded place in jungle area. Even villagers had not thought of searching the place till the accused led them to the spot. Accused committed the offence in order to satisfy his lust. He forcibly raped 13 1/2 year old defenseless school going girl and eliminated her life which is the ultimate insult of womanhood. The subsequent conduct of the accused indicates that he had felt no remorse. After commission of crime, he was found coolly wandering in the village.</p> <p>He thought that victim might expose him before others so buried her body in a naked condition in a ditch and covered the place with grass and mud. The modus-operandi of the accused clearly shows that he would be a menace to the society and there is no possibility of the accused being reformed. Considering the nature of offence, manner in which it was committed and upon evaluating the</p>
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			aggravating and mitigating circumstances, according to the Court, this is a case which falls in the category of rarest of rare case. Therefore, no infirmity found in impugned order and capital punishment was rightly imposed. Hence, Appeal was dismissed.
34.	<p><b><i>Jagar Singh</i></b>  <b>v.</b>  <b><i>State of H.P.</i></b></p> <p><u>2015 (2) RCR</u>  (Criminal) 320</p> <p><b>PIAR SINGH</b>  <b>RANA, J.</b></p>	<p>The petition under Section 438 of the CrPC 1973 has been filed by the accused for grant of anticipatory bail in connection with case where he is charged under Section 354(A) of IPC and Section 8 of POCSO Act 2012. There is recital in police report that on dated 11.7.2014 at 7 PM minor prosecutrix went to urinate in the field and immediately accused-applicant came from behind and caught the arm of minor prosecutrix and pushed her. He told the minor prosecutrix that if she would surrender voluntarily to the sexual desire of applicant then he would not harass the minor prosecutrix. Then accused pressed the breast of minor prosecutrix and also touched body of minor prosecutrix from top to bottom and also inflicted teeth</p>	<p>The High Court said that as per Section 30 of the Protection of Children from Sexual Offences Act 2012 there is presumption of culpable mental state and onus is upon the accused to prove that he had no such mental state. It held that the fact whether accused had no such mental state or not cannot be decided at this stage. The same fact will be decided on merits after giving due opportunity to both the parties to lead evidence in support of their case. As per Section 42-A of Protection of Children from Sexual Offences Act 2012 provisions of POCSO Act shall have overriding effect on the provisions of other law to the extent of inconsistency.</p> <p><i>Interpretation of Section 7 of</i></p>

		<p>bite injury upon the cheeks of minor prosecutrix. There is further recital in police report that thereafter accused removed salwar of minor prosecutrix and thereafter, minor prosecutrix cried in loud voice and on hearing cries of minor prosecutrix maternal grandfather of minor prosecutrix came out.</p>	<p><u>POCSO</u></p> <p>Contention was made that as per Section 7 of the Protection of Children from Sexual Offences Act 2012 sexual intent to touch the naked vagina, naked penis, naked anus or naked breast of the child is essential in order to frame charge against the accused.</p> <p>Court has carefully perused Sections 7 and 8 of Protection of Children from Sexual Offences Act 2012. Court is of the opinion that there is no recital in Section 7 of POCSO Act that touches with sexual intent should be to the naked vagina, naked penis, naked anus or naked breast of the child. Court is of the opinion that even touches to the vagina, penis, anus or breast of the minor child when minor child has worn clothes is sufficient to attract Sections 7 and 8 of the Protection of Children from Sexual Offences Act 2012. The word naked is missing in Section 7 of Protection of Children from Sexual Offences Act 2012 and it is well settled law that</p>
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			<p>Protection of Children from Sexual Offences Act 2012 is a special Act enacted for protection of minors children and it is well settled law that Court is the guardian of minors and it is also well settled law that <u>when two interpretations are possible then interpretation favourable to the minors should be adopted by Court in the ends of justice.</u></p> <p>Court held that it is not expedient in the ends of justice to release the applicant on anticipatory bail. Hence anticipatory bail application filed by applicant is rejected.</p>
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**WORKSHOP ON LEGAL FRAMEWORK TO DEAL WITH  
DRUG ADDICTION AND DRUG TRAFFICKING**

**SESSION 3: 12:00 PM – 01:00 PM**

**IMPORTANCE OF PROCEDURAL SAFEGUARD: NDPS COURTS**

**MOCK TRIAL ON SECTION 42 OF NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES ACT, 1985**

## STATEMENTS OF FACTS

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### I.

On 4/2/2014, IO Mr. Y along with other police officials L1 and L2 were on patrolling duty at village Suraj Nagar. During this duty, they received secret information against Mr. X that he is in the habit of selling chura post (poppy husk) in his house and if a raid is conducted upon his house, he can be caught red-handed with the contraband. On this information, one Mr. O was associated with the raided party to raid the house of Mr. X.

### II.

In the raid, five bags were found lying concealed under a heap of chaff in the courtyard of the house of Mr. X. On suspicion of having some intoxicant in his possession, the investigating officer served notice upon the accused under Section 50 of NDPS Act, 1985 giving him an offer to be searched before a Gazetted Officer or a Magistrate. Mr. X expresses his desire to be searched before a Gazetted Officer.

### III.

Upon having known the desired choice of Mr. X, the Deputy Superintendent of Police, Mr. J, through Constable AS requesting him to reach the spot, reached the spot after about half an hour and upon his instruction the search of the bags was conducted.

### IV.

From each gunny bag, 100 grams of chura post was separated as sample. The samples as well as the remaining gunny bags weighed 39 kg 900 grams each and were sealed. The IO prepared a site plan. On return to the police station, the case property was handed over with its seal intact. After receiving the test report from the Forensic Science Laboratory, challan was filed.

## **POINT OF DETERMINATION/ISSUES**

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I. AT WHAT STAGE AND BY WHAT TIME THE AUTHORIZED OFFICER SHOULD COMPLY WITH THE REQUIREMENTS OF SECTION 42 OF THE NDPS ACT AND REPORT THE MATTER TO HIS SUPERIOR OFFICER?

II. WHETHER THE TRIAL IS VITIATED IN ABOVE CASE OR NOT?

## **RELEVANT PROVISIONS**

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### **Section 42 of Narcotic Drugs and Psychotropic Substances Act, 1985**

Power of entry, search, seizure and arrest without warrant or authorisation.-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

## ARGUMENTS ON BEHALF OF APPELLANT

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As per Section 42 of Narcotic Drugs and Psychotropic Substances Act, 1985,<sup>1</sup> the officer on receiving the secret information from any person had to record it in writing in the register and shall send a copy of it to his/her immediate official superior within 72 hours. Then only, the officer shall proceed to take action in terms of clauses (a) to (d) of Section 42(1).

The Hon'ble Supreme Court in the case of *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*<sup>2</sup> held that the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure.

In the instant case, Mr. Y has received the information around 11:30 am and the distance from the place where they received the information to the spot is 6 km. but they reached his house at 2 pm by Jeep. In between he has plenty of time to write down the reason of his belief but no efforts were taken up by the officer. Even if there was any urgent situation before the said officer, he should have explained with reasons in writing but he has not done so. Therefore, there was sufficient time at his disposal to comply with the provisions of Section 42.

It is humbly submitted before the Hon'ble Court that the case of prosecution must fail for total non-compliance of the statutory provision of Section 42 of NDPS Act. As this provision is mandatory in nature, it is contended that the requirements of Section 42 have not been substantially complied by the authorities in the present case. Hence, the accused is entitled to acquittal as the whole case of the prosecution is vitiated in law.

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<sup>1</sup> Section 42, Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>2</sup> (2000) 2 SCC 513