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CRA-937-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 21st OF FEBRUARY, 2025CRIMINAL APPEAL No. 937 of 2024*THE STATE OF MADHYA PRADESH**Versus**VIVEK AND OTHERS*

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Appearance:

Shri Harish Singh Rathore - Government Advocate for the appellant
State.

None for the respondents

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J U D G M E N T

Per. Justice Gajendra Singh

Heard on IA No. 5499 of 2024 under Section 5 of the Limitation Act, 1963 is allowed and the delay of 28 days in filing the application under Section 378 (3) of CrPC for leave to file appeal through IA No. 912/2024 is hereby allowed.

2. Heard on 912/2024 under Section 378 (3) of the Cr.PC.

3. This application is preferred seeking leave to appeal arising out of the judgment dated 29.09.2023 in Session Case No. 59 of 2021 by Special Judge (POCSO Act, 2012)/Sixth Additional District Judge, Ujjain, whereby non-applicant No.1, Vivek and non-applicant No.2 Gunjan have been acquitted from the charges under Section 368, 376 read with Section 109 of



the IPC and Section 17 read with Section 16 of POCSO Act, 2012.

4. The non-applicants Vivek and Gunjan were prosecuted for wrongfully concealing for keeping in confinement of victim (PW-1) knowingly that she has been kidnapped or abducted and abating the act of penetrative sexual assault towards victim (PW-1) below the age of 18 years.

5. Trial Court has acquitted the non-applicants No. 1 and 2 recording the finding that it is not proved that non-applicants Vivek and Gunjan knew that prosecutrix is minor and she has been kidnapped and prosecutrix has been wrongfully concealed and has been kept in wrongful confinement.

6. This application for leave to appeal has been preferred referring to the testimony of victim (PW-1) her father (PW-6).

7. The principle to be considered at the time of considering the application under Section 378 (3) of the Cr.PC have been dealt with in **State of Maharashtra Vs. Sujay Mangesh Poyarelar, AIR 2008(9) SCC 475** the relevant Paragraph-27 is reproduced as below :-

"27. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate Court against an order of acquittal recorded by the trial Court. We only state that in such cases, the appellate Court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial Court should not be disturbed. Where there is application of mind by the appellate Court and reasons (may be in brief) in support of such view are recorded, the order of the Court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and re-appreciation, review or reconsideration of evidence, the



appellate Court must grant leave as sought and decide the appeal on merits. “

8. Now we are considering the case in hand.

9. Paragraphs- 1 to 8 and Paragraphs 21 to 25 of PW-1 does not discloses that non-applicants were aware about the fact that PW-1 is below the age of 18 years or she has been kidnapped. There is no evidence that victim (PW-1) was wrongfully concealed or was kept in confinement. PW-6 has stated that he did not know the non-applicants No. 1 and 2. There is no evidence that non-applicants No.1 and 2 abated the commission of penetrative sexual assault.

10. Accordingly, on the parameters of Sujay Mangesh Poyarelar (*supra*) an application under Section 378 (3) of CrPC does not deserve to be allowed.

11. Hence, IA No. 912/2024 is rejected and consequently Criminal Appeal also stands dismissed.

No order as to costs.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE