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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd July, 2026
Date of Decision: 19th August, 2026
Uploaded on: 19th August, 2026

 # CNR No.: DLHC011065602025

+ CRL.A. 1742/2025 and CRL.M.(BAIL) 2557/2025

P (IDENTITY REDACTED) .....Appellant

Through: Mr. Shivek Trehan, Mr. Akash Chandna and Ms. Manika Pandey, Advocates.

versus

STATE (NCT OF DELHI) **.....**Respondent

Through: Mr. Ritesh Kumar Bahri, APP for State with Mr. Lalit Luthra and Mr. Randeep Kumar, Advocates. (M: 9910645959) with SI Preeti. Ms. Arushi Anthwal, Advocate for the victim.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGMENT

Vikas Mahajan, J.

1. The present Appeal has been preferred by the Appellant against the impugned judgment dated 4th September, 2025, whereby the Appellant was convicted under Section 376AB/341/323 Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

2. *Vide* separate Order on Sentence dated 24th September, 2025 the Appellant was sentenced in the following terms:

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> *"Keeping in view the above facts of the case, the convict Prakash, S/o, Sh. Gabbu @ Gupta Nishad is sentenced to rigorous imprisonment for life, which shall mean imprisonment for the remainder of his natural life and fine of Rs.5,000/-, and in default of payment of fine, simple imprisonment for two months for offence punishable u/s 376AB IPC. Convict is also sentenced to rigorous imprisonment of six months and fine of Rs.500/-, and in default of payment of fine, simple imprisonment for 15 days for offence punishable u/s 323 IPC. Convict is further sentenced to simple imprisonment of 15 days and fine of Rs.100/-, and in default of payment of fine, simple imprisonment for seven days for offence punishable u/s 341 IPC. Benefit of Section 428 Cr. P.C. (Section 468 BNSS), qua any period spent by the convict in judicial custody, be given to the convict. Fine not paid."*

3. The case of the prosecution is that on 22nd August, 2018, at about 8.30 PM, near public toilet Hoti Camp, Rangpuri Pahari, New Delhi when the victim child aged about 10 years had gone to urinate, the Appellant threw her down in a pit and committed aggravated penetrative sexual assault upon her. The Appellant also caused bite marks on her chest and cheeks and also pressed neck of the victim.

4. On the basis of the said allegations, an FIR no. 440/2018 was registered at Police Station-Vasant Kunj (South) for the offences under Section 376 IPC and Section 6 of the POCSO Act on 23rd August, 2018.

5. As borne out from the charge sheet, IO/SI Saroj received an information *vide* DD No. 14A dated 24th August, 2018 to the effect that at 2 AM the Appellant had been arrested in another case, FIR No. 441/2018, registered at PS-Vasant Kunj (South), under Sections 363/365 IPC. At the time of his arrest, he confessed that on 22nd August, 2018, near the public

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toilet at Hoti Camp, Rangpuri Pahari, New Delhi he had committed sexual assault on a girl aged about 10-11 years in a pit near the bushes.

6. Thereafter, the Appellant was investigated in the present case on 24th August, 2018, during which a further disclosure statement was recorded. Upon completion of investigation, a chargesheet was filed against the Appellant.

7. On the basis of the chargesheet and material on record, the Ld. Trial Court *vide* order dated 16th April, 2019, framed the charges against the Appellant for the commission of offences punishable under Sections 341/363/365/366/376AB/323 IPC and Section 6 of the POCSO Act, to which he pleaded not guilty and claimed trial.

8. Prosecution examined six witnesses including the victim.

9. On the basis of evidence on record, Ld. Trial Court held that the offence of kidnapping had not been proved. However, the Appellant was convicted for the offences punishable under Sections 341/376AB/323 IPC and Section 6 of the POCSO Act.

10. The Trial Court convicted the Appellant recording that the victim has categorically stated the manner in which the offence was committed against her and had also identified the Appellant as the person who committed the aggravated penetrative sexual assault. The reasons recorded by the Ld. Trial Court are as under:

> *"25. Victim when examined as PW-1 has categorically stated that when she went to urinate, the accused pushed her in the khai and no only bitten on her cheeks and chest but also put his male organ in her female organ and committed the aggravated penetrative sexual assault. Victim has identified her wearing clothes when produced before the Court which were having mud stains as well as darker stains appears to be*

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mix of mud and blood stains. Victim has also correctly stated the date of the incident. She has also identified the bed sheet in which her mother covered her before she was taken to the hospital. Victim has also correctly identified the accused as the person who committed the aggravated penetrative sexual assault. The said version of the victim was corroborated by her mother who had stated that while she came back to house from the shop of her husband with her two other children, victim remained in the shop with her father and at about 10 in the night victim came to the house weeping along with her neighbours, her body drenched in water and blood was coming from her vagina and her payjami was also down and her kurta was torn. PW-2 also stated that even blood was coming from her face and her hairs were having grass (ghasfus). The said version corroborates with the testimony of the victim as well as with the version given in the MLC Ex.PW P-10. The MLC of victim has noted bruises over right anterior chest (over breast) as well as abrasion over right side face. It also noted marks of throtting over neck, bite marks over left cheek. The doctors also noted that fourchette and introits are torn, hymen is torn and in the area of anus and rectum patulous multiple superficial tear in parianal region @12, 4, 6, 7 O'clock position. Findings of speculum examination is 20 parineal tear noted above 6-7 inch length along right lateral vaginal wall bleeding from perineal tear present. The doctor has noted that the rectal mucosa intact and mucodal discharge from anus. The above noted injuries points to a brutal aggravated sexual assault on victim aged about 10 years. The medical examination and potency test of accused was also conducted on 24.08.2018 vide Ex.P-13. The doctor has noted external injuries upon the body of accused, which are two days old which also corroborates the version of the prosecutrix that accused assaulted the victim in the 'khai' and the injuries upon accused were result of struggle of victim when she might have attempted to save herself. The doctors opined that there is nothing found to suggest that the accused was incapable of performing sexual intercourse under ordinary circumstances.

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xxx *xxx* *xxx*

29. Even though the FSL result Ex.P-29 is inconclusive as it has not been able to match the blood samples of the victim with the blood samples of accused. However, it is to be noted that the FSL result is only a corroborative piece of evidence as propounded by the Hon'ble Supreme Court in a number of cases and the FSL result itself cannot be a ground for conviction or acquittal in the absence of other incriminating evidence. In the present case, the victim has categorically stated the manner in which the offence is committed against her and she has identified the accused as a perpetrator of the crime. The observation of the Ld. Predecessor when the victim was shown the accused on the screen, shows the natural reaction of the victim, who was still a child of about 12 years, shows that it is the accused who had committed the offence against the victim."

11. Mr. Shivek Trehan, learned counsel appearing on behalf of the Appellant, submits that there was a material contradiction in the testimony of the victim, examined as PW-1, as to the identity of the Appellant.

12. He further submits that, as per the prosecution version, the incident happened at night at about 8.30 PM, which was also affirmed by PW-1. She was pushed into a pit and blind folded. It was dark and there was no light. Therefore, there was no occasion for the victim to identify the perpetrator.

13. He submits that after some time, the victim volunteered that one light was on, and also nodded in affirmative to the query posed by the Court as to whether she had seen the face of the person who assaulted her, but there is material contradiction in the testimony of the child witness as to the identity of the person who assaulted her, it would not be safe to convict the appellant solely on her testimony without further corroboration.

14. He further submits that the Appellant was not named either in the FIR or in the statement of any witness.

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15. He contends that the name of the Appellant has surfaced only on the basis of his confession made by him to the police while he was in custody in connection with another case. Elaborating on this, he submits that the Appellant had been arrested on 23rd August, 2018 in connection with another FIR No. 441/2018 under Sections 363/365 IPC, registered at the same police station, and as per prosecution version he confessed to the commission of the present offence while he was still in custody of the police in respect of the said FIR, which clearly shows that a false case has been foisted on the Appellant who was available in the custody of the police in connection with another FIR.

16. Mr. Trehan further invites attention of the Court to the FSL report, Ex.P-29, to submit that the Appellant DNA profile of the Appellant has also not matched with that of semen stains found on the microslides of the victim.

17. He submits that the recovery of cloth used for blindfolding the victim was effected from an open place, and that there were no public eye-witnesses to the recovery nor such recovery connects the Appellant to the alleged crime.

18. *Per contra*, Mr. Ritesh Kumar Bahri, learned APP appearing on behalf of the State, submits that PW1 had not only stated that she had seen the face of the person who sexually assaulted her, but had also identified the Appellant as the person who committed the offence.

19. He has also drawn attention of the Court to the observations of the Trial Court to contend that the moment the victim saw the accused on the screen, her expression had changed and she became perturbed.

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20. He contends that non-matching of the DNA profile, as opined in the FSL report, was not fatal to the prosecution case, inasmuch as the victim had specifically identified the Appellant.

21. He urged that, having regard to the young age of the victim, such a heinous crime ought not to go unpunished.

22. Ms. Arushi Anthwal, learned counsel appearing on behalf of the victim submits that the victim had clearly identified the Appellant, which is borne out from her testimony to the effect that she had seen the Appellant before she was blindfolded.

23. We have learned counsel for the Appellant, learned APP for the State, as well as learned counsel for the victim and have carefully perused the record.

24. The only substantive incriminating evidence in the present case is the sole testimony of victim, examined as PW-1.

25. Since the testimony of PW-1 is crucial in deciding the criminal liability to be fastened on the Appellant and the fate of the present Appeal, the relevant extract from the same is set out hereinbelow for the ease of reference:

> *"Mai papa ke dukaan pe thi. Mummy boli ghar chal. Maine bola ki papa ke sath aaungi. Mujhe toilet laga to mai toilet karne chali gai, jahan pe sharabi log the joh sharaab peete hain. To mai khule mein gai thi. Jaise hi maine toilet karke uthi tabhi ek uncle aaye. Unhone mujhe khai mein dhakka diya aur aankh pe patti bandhi"……. the victim described the incident*."

26. During the course of the testimony, the learned APP wanted to cross-examine the witness, as she was not disclosing the complete facts and the

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Trial Court permitted the same. During such cross-examination, the witness further testified as under:

"Question: *Jis khai mein accused ne aapko gera woh kaisi thi?*

Ans. *Gehri thi.*

Question: *Sookhi thi ya keechad tha?*

Ans. *Sookhi thi.*

Question: *Jin uncle ne aapke sath aisa kiya kya woh uncle jaane se pehle aapke aankho ki patti khol ke gaye the?*

Ans. *Pata nahi.*

Yeh kehna sahi hai ki mujhe nahi yaad hai ki woh uncle jinhone aisa kiya woh meri aankho ki patti khol ke gaye the. Yeh kehna sahi hai ki uss waqt maine joh pajama pehna hua tha uss par khoon aur keechad lag gaya tha. Yeh Kehna galat hai ki mera pajama ghar pe utaar diya tha aur mujhe chaddar mein lepait ke hospital le gaye the, mujhe pata nahi. ***Yeh kehna sahi hai ki jab mai toilet karne gai thi tab 8:30 baj rahe the.***

Question: *Kya uss waqt chandni raat thi?*
Question is rephrased as under:
Kya chand ki Roshni thi uss raat?

Ans. ***Andhera tha***

Question: *Kya uss waq itni roshni thi ki aap uncle ka chehra dekh pao?*

Ans. ***The witness has nodded a no. After sometime, vol. haan ek light jal rahi thi.***

Court Question: *Jiss uncle ne aapke sath aisa kiya, aapne kya unnka chehra dekha tha?*

Ans. ***She has nodded a yes.***

Question: *Kya unn uncle ne aapke gala bhi dabaya tha?*

Ans. *The witness has nodded a yes."*

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27. Before appreciating the testimony of PW-1, it would be apposite to examine the legal position as regards the probative value to be assigned to the testimony of a child victim in matters relating to sexual offences, where the case of the prosecution rests solely on the statement of the child victim, as in the present case.

28. In ***State of Madhya Pradesh v. Balveer Singh, (2025) 8 SCC 545***, the Supreme Court elucidated the manner in which the testimony of child witness is to be appreciated. The relevant extract from the said decision reads thus:

> *"**67.** We summarise our conclusion as under:*
>
> ***67.1.** The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.*
>
> ***67.2.** As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the trial court to ascertain if the child witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
>
> ***67.3.** Before the evidence of the child witness is recorded, the trial court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
>
> ***67.4.** The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the trial court. The correctness of the opinion formed by the trial court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinising the preliminary examination conducted by the trial court, or from*

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the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the trial court.

67.5. *The testimony of a child witness who is found to be competent to depose i.e. capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*

67.6. The trial court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others*.*

67.7. There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

67.8. Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard-and-fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

67.9. Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. *If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the*

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accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

67.10. *The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.*

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of the Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:

- ***Opportunity of tutoring of the child witness in question****—whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful,*

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or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

▪ ***Reasonable likelihood of tutoring****—wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

67.11. *Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.*

67.12. *Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into*

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consideration or the purpose of corroboration as in the case of a hostile witness."

29. Clearly, the sole testimony of the child victim, if found reliable and trustworthy requires no corroboration and may be sufficient to sustain the conviction of the accused. The Court must rule out the possibility of tutoring before it proceeds to determine the guilt or innocence of the accused on the basis of the testimony of a child witness. However, where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions, the Court has to be circumspect and look for corroboration of material particulars as a requirement of the rule of prudence, for the child witnesses are liable to be influenced easily.

30. We have examined the testimony of the child victim PW-1, and find evident contradictions and discrepancies therein. The victim, in her examination-in-chief, stated that the person who sexually assaulted her had pushed her into the pit and thereafter blindfolded her. According to the learned APP, the victim was not disclosing the complete facts in terms of the prosecution's case, he sought and was granted permission to cross-examine the said witness. Accordingly, he had put leading questions to the witness.

31. In the course of such cross-examination, the victim stated that the incident had occurred at about 8:30 PM. On being specifically queried whether there was any moonlight at the time, she categorically stated that it was dark. When further asked by the learned APP that whether there was sufficient light for her to see the face of the person who assaulted her, the witness first nodded 'No'. However, after some time, she stated that one light was on. Thereafter, in response to the question posed by the Court as to

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whether she had, in fact, seen the face of the person who assaulted her, she nodded 'Yes'.

32. The foregoing testimony discloses a manifest contradiction as regards the victim having seen the face of the perpetrator. Her subsequent assertion that a light was on at the spot is, incidentally, not borne out from the two site plans on record, one prepared at the instance of the accused, Ex.PW6/H, and the other at the instance of the victim, Ex.PW6/K. Upon perusal of the said site plans, we find no indication of any lamp-post or source of light in the vicinity of the place of occurrence.

33. There is thus, an absence of coherence and consistency in the victim's testimony insofar as identification of the accused is concerned. Her improved version regarding the presence of light near the place of incident finds no support from the site plans referred to herein above. Further, the victim, in her cross-examination, also stated that the paper on which she was made to write by the Investigating Officer was blank and nothing had been written on it.

34. In these circumstances, we are of the opinion that though the victim has identified the accused on the screen when the Appellant was shown to her in the Court, it would not be safe to rely solely on her testimony for convicting the Appellant without further corroboration.

35. There is another strong reason as to why we are impelled to adopt the above course. As per prosecution version, the person who had committed assault on the victim was not known to her. Neither in the FIR nor in the MLC, the Appellant was named as a perpetrator of the offence, rather it has been recorded in both these documents that such offence has been committed by an unknown person after blindfolding the victim. It is not a

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case where any witness had seen the victim in the company of the Appellant or had seen him committing sexual assault upon the victim.

36. Intriguingly, the name of the Appellant as perpetrator has surfaced only on the basis of his so-called confessional disclosure made by him while he was in the police custody in connection with another FIR No.441/2018. The incident happened on 22nd August, 2018. As borne out from the chargesheet, the Appellant was arrested on 23rd August, 2018 in connection with another FIR No.441/2018 under Sections 363/365 IPC registered at P.S. Vasant Kunj (South). It is during his custody in the said case that the Appellant is stated to have confessed the commission of offence of penetrative sexual assault against the victim, in respect of which present FIR No.440/2018 already stood registered on 23rd August, 2018 in the very same police station.

37. This factum brings the prosecution case under the cloud of suspicion giving rise to the doubt that under some sort of pressure of public outcry, the Appellant who was already available in the custody of the police as accused in connection with another FIR No. 441/2018, was made a scapegoat and falsely implicated in the present case.

38. Coming to the possible corroborative evidence, we note that the FSL report, which could have been a clincher, does not support the prosecution version at all, the relevant extract of which is set out hereinbelow for ease of reference.

> *"The biological stains (blood stains) present on the source of exhibits '1e', '1f' (microslides of Victim) is similar with the source of exhibit '1m' (Blood sample of Victim).* ***However, the biological stains (semen stains) present on the source of***

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exhibits '1e', '1f' (microslides of Victim) is not similar with the source of exhibit '6' (Blood sample of accused)."

39. Clearly, the forensic evidence on record severely undermines the prosecution's narrative. The FSL report explicitly concludes that the biological stains (semen stains) present on the microslides of the victim are not similar to the blood sample of the Appellant.

40. Likewise, the recovery of a piece of cloth with which the victim was blindfolded, at the instance of the Appellant, also appears to be planted in the facts and circumstances of the present case for three reasons – *firstly*, such piece of cloth can easily be procured and is otherwise available in every household. *Secondly*, perusal of seizure memo, Ex. PW-6/G, shows that no independent witness was associated at the time of so-called recovery. *Thirdly*, the recovery was made from an open space, which renders the recovery doubtful.

41. Merely because there is a Trial Court's observation with regard to the victim becoming uncomfortable and perturbed when she was shown the appellant on the screen for identification, cannot be the basis of conviction, when the evidence and circumstances on the record leaves reasonable suspicion as regards the Appellant's involvement in the alleged sexual assault upon the victim and raises substantial doubt regarding the integrity of the prosecution's case.

42. In light of the above discussion, the appeal succeeds, and the impugned judgment of conviction dated 4th September, 2025 and order on sentence dated 24th September, 2025, is set aside. The appellant is acquitted of the charges framed. Bail bond and the surety bond are discharged.

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43. It is directed that the Appellant be released forthwith if not required in any other case.

44. Copy of this order to be communicated to the concerned Jail Superintendent for necessary information and compliance.

45. Order to be uploaded on the website of this Court *forthwith*.

VIKAS MAHAJAN
JUDGE

PRATHIBA M. SINGH
JUDGE

AUGUST 19, 2026/*jg*

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