

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2017

(Against the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab and Haryana at Chandigarh in Cr. M. NO. 23962 of 2017 in Cr. A. No. S-2396-SB of 2017 titled as "Vikas Garg v. State of Haryana"; Cr.M.No. 26910-11 of 2017 in Cr.A.No. D-653-DB of 2017 titled as "Karan v. State of Haryana", and; Cr.M.No.26930 of 2017 in Cr.A.No. D-662 of 2017 titled as "Hardik v. State of Haryana").

**IN THE MATTER OF:**

Ms. "X"

...PETITIONER

**VERSUS**

The State of Haryana etc. etc.

...RESPONDENTS

PAPER BOOK

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR PETITIONER: ROHIT KUMAR SINGH

**FIRST INFORMATION REPORT**

1. **DIARY NO.**
  
2. **DATE OF LODGMENT OF FIR COMPLAINT:** 11.04.2015
  
3. **DATE OF OCCURRENCE:** 2013-2015
  
4. **POLICE STATION ADDRESS WITH STATE:** P.S RAI,  
SONIPAT, HARYANA
  
5. **DATE OF FILING CHARGE SHEET / CHALLAN:** 4.7.2015
  
6. **WHETHER TRIED BY THE COURT OF MAGISTRATE:** NO
  
7. **WHETHER TRIED COURT OF SESSIONS SPECIAL JUDGE:**  
YES

ROHIT KUMAR SINGH  
**ADVOCATE FOR THE PETITIONER:**

**INDEX**

S. No	Particulars	Pages
1.	Office Report on Limitation	'A'
2.	Listing Performa	A1-A2
3.	Synopsis and list of dates	B-K
4.	Certified copy of the impugned final order dated 13/9/2017 passed by the High Court of Punjab and Haryana at Chandigarh.	
5.	Special Leave Petition with Affidavit	
6.	<b>Appendix 1-</b> containing section 389 of the Code of Criminal Procedure, 1973, referred to in the impugned judgment/order.	
7.	<b>Appendix II-</b> containing sections 120-B, 292, 375, 376, 376 (D), 506 of the Indian Penal Code, 1860, referred to in the impugned judgments/orders.	
8.	<b>Appendix III-</b> containing section 67-A of the Information Technology Act, 2000, referred to in the impugned judgments/orders.	
9.	<b>Annexure -P1:</b> Certified copy of the evidence of PW-1.	
10.	<b>Annexure -P2:</b> Certified copy of the evidence of PW-7.	
11.	<b>Annexure -P3:</b> Certified copy of the evidence of PW-11.	
12.	<b>Annexure -P4:</b> Certified copy of the evidence of PW-12.	
13.	<b>Annexure -P5:</b> Certified copy of the evidence of PW-29.	
14.	<b>Annexure -P6:</b> Certified copy of the evidence of PW-30.	
15.	<b>Annexure -P7:</b> Certified copy of the evidence of PW-31.	

16.	<b>Annexure -P8:</b> True typed copies of “WhatsApp” messages exchanged between victim and respondent no. 4 between 25/1/2015 - 5/3/2015 exhibited as Ex. PW1/D.	
17.	<b>Annexure -P9:</b> Certified copy of the judgment of conviction dated 24/5/2017.	
18.	<b>Annexure -P10:</b> Certified copy of the judgment of sentencing dated 26/5/2017.	
19.	Application seeking permission to file the Special Leave Petition	

**IN THE SUPREME COURT OF INDIA**

(CRIMINAL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CRIMINAL) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

Ms. "X"

...PETITIONER

**VERSUS**

The State of Haryana etc. etc.

...RESPONDENTS

**OFFICE REPORT ON LIMITATION**

1. The Petition is within time.
2. The Petition is barred by time and there is delay of    days in filing the same against impugned order of the High Court dated    dated 13.9.2017 and Petition for Condonation of    days delay has been filed.
3. There is delay of \_\_\_ days in re-filing the Petition and Petition for Condonation of \_\_\_ days in re-filing has been filed.

BRANCH OFFICER

New Delhi

Dated: \_\_.09.2017

**PROFORMA FOR FIRST LISTING****SECTION IIA**

The case pertains to (Please tick / check the correct box) :

- Central Act: Code of Criminal Procedure, 1973
- Section: 438
- Central Rule (Title): N.A
- Rule No(s): \_\_\_\_\_ N.A \_\_\_\_\_
- State Act: (Title): N.A
- Section \_\_\_\_\_ N.A \_\_\_\_\_
- State Rule: (Title) \_\_\_\_\_ N.A \_\_\_\_\_
- Rule No (s)
- Impugned Interim Order: (Date): N.A
- Impugned Final Order/Decree: 13/9/2017
- High Court : High Court of Punjab and Haryana at Chandigarh
- Names of Judges : Hon'ble Mr. Justice
- Tribunal/Authority : (Name) \_\_\_\_\_ N.A \_\_\_\_\_

1. Nature of Matter :  Civil  Criminal
2. (a) Petitioner/: Ms. "X"  
 (b) e-mail ID : \_\_\_\_\_ N.A \_\_\_\_\_  
 (c) Mobile phone number \_\_\_\_\_ N.A \_\_\_\_\_
- 3.(a) Respondent No. 1: State of Haryana  
 (b) e-mail ID : \_\_\_\_\_ N.A \_\_\_\_\_  
 (c) Mobile phone number \_\_\_\_\_ N.A \_\_\_\_\_
4. (a) Main/category classification : 14: Criminal Matters  
 (b) Sub Classification: 1409: Matters relating to anticipatory bail
5. Not to be listed before \_\_N.A\_\_\_\_\_

6. Similar / Pending Matter : N.A
7. Criminal Matters: N.A
- (a) Whether accused/convict has surrendered  Yes  No
- (b) FIR No. 144/2015 Date: 11.04.2015
- (c) Police Station: PS- Rai, Sonipat
- (d) Sentence Awarded : 7 years to R-1; 20 years each to R 3-4.
- (e) Sentence Undergone : R-2 (1 year, 11 months); R-3 (2 years, 4 months); R-4 (2 years, 5 months)
8. Land Acquisition Matters :
- (a) Date of Section 4 Notification \_\_\_\_\_N.A\_\_\_\_\_
- (b) Date of Section 6 Notification \_\_\_\_\_ N.A\_\_\_\_\_
- (c) Date of Section 17 Notification \_\_\_\_\_ N.A \_\_\_\_\_
9. Tax Matters : State the tax effect : \_\_\_\_\_ N.A \_\_\_\_\_
10. Special Category (first Petitioner/appellant only) :
- Senior Citizen >65 years  SC/ST  Woman/Child
- Disabled  Legal Aid Case  In custody
11. Vehicle Number (in case of Motor Accident Claim matters):
12. Decided cases with citation \_\_\_\_\_ N.A \_\_\_\_\_

Date: .09. 2017

ROHIT KUMAR SINGH  
Advocate for Petitioner(s)  
Code No.

**SYNOPSIS AND LIST OF DATES**

This SLP is directed against the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab & Haryana at Chandigarh in each of the three applications preferred by the convicts/respondents 2-4 for suspension of their sentences in their respective appeals filed before the High Court against the trial court’s judgment dated 24/5/2017 on conviction and judgment dated 26/5/2017 on sentencing. A table detailing sentences passed against each of the convicts by the trial court is as follows:

<b>Name of convict</b>	<b>Offences</b>	<b>Period of rigorous imprisonment</b>	<b>Fine imposed</b>	<b>Sentence in default of fine</b>
<b>Vikas/ Respondent no. 2</b>	376 IPC r/w 120- B IPC	7 years	10,000/-	10 months
	292 r/w 34 IPC	2 years	2,000/-	2 months
	67-A IT Act, 2000	5 years	50,000/-	5 months
<b>Karan/ Respondent no. 3</b>	376 (D) IPC	20 years	20,000/-	1 year
	376 (2) (n) r/w 120-B IPC;	10 years	10,000/-	10 months
	292 r/w 34 IPC	2 years	2,000/-	2 months
	67-A IT Act.	5 years	50,000/-	5 months
<b>Hardik/</b>	376 (D)	20 years	20,000/-	1 year



<b>respondent no. 4</b>	IPC			
	376 (2) (n) IPC;	10 years	10,000/-	10 months
	120-B IPC	7 years	10,000/-	10 months
	292 r/w 34 IPC	2 years	2,000/-	2 months
	506 IPC	2 years	2,000/-	2 months
	67-A IT Act.	5 years	50,000/-	5 months

Prosecution's case is that the victim, the then student of the BBA-MBA Course in OP Jindal University, Sonipat, came in contact with another student of the same university viz. the convict/respondent no. 4 during the Children's Day celebration in the campus of the university. Soon thereafter, respondent no 4 befriended the victim and coaxed her to send her nude pictures to him. Thereafter, the respondent no 4 began to blackmail the victim to have sex with him under the threat of making her nude pictures public in the university. Under the said threat, the respondent no 4 raped the victim several times at different places in the university campus, amongst other places, which are not well lit at night and is not frequented by public. Such places include pilot-room in helipad on the campus, nursery, behind the helipad, guard-box in the football field, washroom of the academic block of the campus.

Respondent no 4, acting by design, sent his friend respondent no 2 (student of the same university) to the victim, who at first looked considerate to the situation of the victim and appeared to offer solace to her. However, later, respondent no 2, taking advantage of the vulnerable situation of the victim, in April, 2014, raped the victim.

The respondent no 4 continued to blackmail the victim all along on the threat of making her nude pictures public. The respondent no 4 started to threaten the victim to sexually gratify his friend-respondent no 3 (student of the same university) as well, failing which she would be put to shame in the entire university. Respondent no. 3, in furtherance of the said design, raped the victim twice, between August – December, 2014, along with the convict/respondent no. 4.

Respondent no 4, made the victim travel to Chandigarh on 11/1/2015, to sexually gratify him there as he was interning there at that time. Upon reaching Chandigarh, the victim was raped there by the respondent no 4.

The respondents 2-4 always had a diabolic design to ravage the victim by acting on the repeated threats of making her nude pictures public. The respondent no 4 was always cautious of not leaving trace of his involvement with the victim anywhere and he would stress upon the gate passes being obtained by the victim herself to move out of the university campus. The respondent no 4 made the victim his slave and would make her perform strange acts on the basis of threats. The victim would be often made to strip down naked frequently to send more nude pictures to the respondent no 4. The respondent no 4 would make the victim run around the entire football field in severe cold on the basis of the same threats.

On 7/2/2015, respondent no 4 threatened the victim to travel to a resort in Sonipat and to book a room in her own name. The victim was also forced to get condoms and Viagra tablet to the resort by the respondent no 4. The victim was again raped in the said resort and respondent no 4 also shot a film of the same. The respondent no. 4 forced the victim to buy alcohol at the resort.

The victim was severely damaged in her physical and mental health and was at the verge of collapsing anytime pursuant to the immense-inhuman torture being meted out to her. However, at the same time, the victim was put in pitiable predicament as she could not disclose the said facts to anybody, including her parents, as she immensely feared being shamed in public amidst her friends and teachers in the university where she had arrived to build her career.

Upon information by a friend of the victim to her parents regarding she being under immense stress over something which was not disclosed, the victim's parents arrived at the university campus on 11/4/2015. Upon being confronted by the victim's parents, the victim broke down before her parents and began to tell them of the intense harassment in bit by bit. This was the first time when the victim confided to anyone about the gory torture being faced by her. The parents then confronted the Registrar of the university who asked the warden to get the respondent no 4 along with his cell phone. Thereafter the phone of respondent no. 4 was unlocked by the Warden with password for the same provided by the respondent no. 4, which showed the presence of nude pictures of victim contained therein. It was also revealed during inspection of the phone of the respondent no 4 that he had circulated the nude pictures of the victim in a group of his friends maintained in the application "WhatsApp". The said photographs were further captured by the warden in her phone and preserved and later sent to CFSL for examination which produced them in the trial court.

During the trial, PW-2, officer of the CFSL, Chandigarh, produced the phone which the victim was using at the relevant time. In the said phone, certain "WhatsApp" messages, exchanged between the victim and the respondent no 4 between 25/1/2015-5/3/2015 were found. The printouts of the said messages were exhibited as Ex. PW-1/D (129 pages)

in the record of the trial court. The said messages were also contained in the printouts of the “WhatsApp” messages as produced by the officer of the CFSL who examined the phone of the prosecutrix and devices of the respondents 2-4. The said messages as produced by the officer of the CFSL are exhibited as Ex. P-Z/3 to Ex. P-Z/237 in the record of the trial court. The said messages show a very graphic and gory picture of the torture being suffered by the victim. The said messages duly corroborate the version of the victim regarding the various inhuman acts which she was forced to do under the threat of her nude pictures being made public. The victim had stated in her evidence before the court that although, the respondent no 4 used to delete his messages exchanged with her frequently in their meetings, the messages of the said period were saved in the phone as the screen of the said phone had broken due to which the contents of the phone were not visible. Later, the victim stated, when the phone’s screen was repaired, the said messages were found in it. The phone was subsequently handed over to the police authorities for investigation which was later sent to the CFSL as aforesaid.

Apart from the clear and cogent testimony of the victim/petitioner supported by the digital evidence as aforesaid, there was ample corroboration in the form of other witnesses as well. PW-11 (Chief Warden of the hostel of university) and PW-12 (Registrar of the University) stated of the complaint being made by the victim and her parents and consequent production of respondent no 4 at his office by the security officer. They also stated of the recovery of nude pictures of the victim found in the phone of the respondent no 4 and its dissemination in the WhatsApp Group of his friends. PW-7 (victim’s father) also stated of the entire proceedings as aforesaid and subsequent events pursuant to the disclosure of the ordeal to him by the victim. The three witnesses as aforesaid clearly spoke of the admission of guilt by the respondent no. 4 on being produced at the Registrar’s office as

aforesaid. PW-29 and PW-30 proved MLRs of convicts to the effect that all the three convicts were capable of having sexual intercourse. PW-31 proved MLR of the victim to the effect that possibility of sexual intercourse with the victim cannot be ruled out.

However, during the hearing of the appeal of the convicts, the High Court, by selectively relying upon few extracts of the evidence of the victim, suspended their sentences as aforesaid. The said extracts relate to the victim smoking cigarettes, drugs and drink alcohol. The extracts relied upon by the High Court also relate to the condoms being found from the hostel room of the victim. However, the said extracts from the evidence of the victim are relied upon by the High Court to suspend the sentences of the convicts without referring to the context in which they appear and the explanation provided by the victim which accompany such extracts. Also, while suspending their sentences as aforesaid, the High Court passed several remarks upon the general character of the victim by describing her conduct as “promiscuous”. Moreover, the High Court made wholly unwarranted observations to the effect that the complainant indulged in “casual sex”, “adventurism” and “experimentation in sexual encounters”. The said approach of the High Court not only lacks sensitivity towards the victim of the gruesome crime but is also against the settled law of the country. The misplaced sympathy of the High Court in favour of the convicts runs counter to the interests of the society. The Supreme Court in ***State of Haryana v. Prem Chand, 1990 1 SCC 249*** clearly laid down that character or reputation of the victim is wholly irrelevant for the purposes of the conviction or sentencing of the accused. The statement as aforesaid is now in statute book by virtue of 2013 amendment to the Indian Evidence Act in the form of Section 53A and Section 114A of the Evidence Act. Thus, the very basis for suspending the sentences of the convicts is erroneous due to which the impugned order is liable to be set aside.

Moreover, while suspending the sentences of the convicts as aforesaid, the High Court has adversely commented upon various aspects of the prosecution case, which could be adjudicated upon only at the conclusion of the appeal. The High Court, in the impugned order, has found the version of the prosecution doubtful, before the hearing of the appeal thereby prejudicing the prosecution's case in the appeal.

### **LIST OF DATES**

August-

November

2013

The victim took admission in the BBA-MBA Course in the OP Jindal University, Sonipat, Haryana, in August 2013. The respondent no 4 (student of Law) befriended the victim during the celebration of Children's Day.

November

2013

The respondent no 4, soon after the friendship with the victim, coaxed her into sending her nude pictures to him. Thereafter, the respondent no 4 began to blackmail the victim to have sex with him under the threat of making her nude pictures public in the university.

January-

April

2014

Respondent no 4, acting by design, sent his friend respondent no 2 to the victim, who at first looked considerate to the situation of the victim and offered to offer solace to her. However, later,

respondent no 2, taking advantage of the vulnerable situation of the victim, in April, 2014, raped the victim.

August-

December

2014

The respondent no 4 started to threaten the victim to sexually gratify his friend-respondent no 3 as well, failing which she would be put to shame in the entire university. Respondent no 3, acting on the said design, raped the victim twice, between August –December, 2014.

2014-15

The respondent no 4 made the victim his slave and would make her perform strange acts on the basis of threats. The victim would be often made to strip down naked frequently to send more nude pictures to the respondent no 4. The respondent no 4 would make the victim run around the entire football field in severe cold on the basis of the same threats.

11/1/2015

Respondent no 4, made the victim travel to Chandigarh on 11/1/2015, to sexually gratify him there as he was interning there at that time.

7/2/2015

On 7/2/2015, the victim was forced to book a room in resort in Sonipat in her own name. The victim was then again raped in the a resort in Sonipat by the respondent no 4 and respondent no 4 also shot a film of the same.

11/4/2015

Upon information by a friend of the victim to her parents regarding she being under immense stress over something, the victim's parents arrived at the university campus on 11/4/2015.

Upon being confronted by the victim's parents, the victim broke down before her parents and began to tell them of the intense harassment in bit by bit. The parents then confronted the Registrar of the university who asked the warden to get the respondent no 4 along with his cell phone. On appearance of respondent no 4, his phone was unlocked by the warden with the help of password provided by him, which showed the presence of nude pictures of victim contained therein. It was also revealed during inspection of the phone of the respondent no 4 that he had circulated the nude pictures of the victim in a group of his friends maintained in the application "WhatsApp". The said photographs were further captured by the warden in her phone and preserved and later sent to CFSL for examination which produced them in the trial court.

2016-17 During the trial, the victim deposed as PW-1 and stated her ordeal in clear and cogent manner giving complete details of the crimes. PW-2, officer of the CFSL, Chandigarh, produced the phone which the victim was using at the relevant time. In the said phone, certain messages, exchanged between the victim and the respondent no 4 between 25/1/2015 - 5/3/2015 were found. There was ample corroboration of the victim's testimony in the form of other witnesses as well such as PW-11 (Chief Warden of the hostel of university) and PW-12 (Registrar of the University). PW-29 and PW-30 proved MLRs of convicts to the effect that all the three convicts were capable of having sexual intercourse. PW-31 proved MLR of the



victim to the effect that possibility of sexual intercourse with the victim cannot be ruled out. Certified copy of the evidence of PW-1 (victim) is annexed hereto as **Annexure P-1 (page )**. Certified copy of the evidence of PW-7 (victim's father) is annexed hereto as **Annexure P-2 (page )**. Certified copy of the evidence of PW-11 is annexed hereto as **Annexure P-3 (page )**. Certified copy of the evidence of PW-12 is annexed hereto as **Annexure P-4 (page )**. Certified copy of the evidence of PW-29 is annexed hereto as **Annexure P-5 (page )**. Certified copy of the evidence of PW-30 is annexed hereto as **Annexure P-6 (page )**. Certified copy of the evidence of PW-31 is annexed hereto as **Annexure P-7 (page )**. True typed copy of the evidence of "WhatsApp" messages as aforesaid, which is exhibited as Ex. PW-1/D in the record of the trial court is annexed hereto as **Annexure P-8 (page )**.

24/5/2017;

26/5/2017 The trial court convicted and sentenced the convicts/respondents 2-4 as aforesaid. Certified copy of the judgment and order dated 24/5/2017 is annexed hereto as **Annexure P-9 (page )**. Certified copy of the judgment and order dated 26/5/2017 is annexed hereto as **Annexure P-10 (page )**.

13/9/2017 During the hearing of the appeal of the convicts, the High Court, by selectively relying upon few extracts from the evidence of the victim,

suspended their sentences as aforesaid by the impugned judgment and order. Also, while suspending their sentences as aforesaid, the High Court passed several remarks upon the general character of the victim by describing her conduct as “promiscuous”. Moreover, the High Court made wholly unwarranted observations to the effect that the complainant indulged in “casual sex”, “adventurism” and “experimentation in sexual encounters”.

10.2017      The present SLP is filed.

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Order XXII Rule 1 (1)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2017

**BETWEEN:**

**POSITION OF PARTIES**

	IN TRIAL COURT	IN HIGH COURT	IN THIS COURT
Ms. "X"	COMPLAINANT	COMPLAINANT	PETITIONER

DETAILS  
WITHHELD

**Versus**

1. THE STATE OF HARYANA	PROSECUTION	RESPONDENT	RESPONDENT NO 1
-------------------------------	-------------	------------	--------------------

THROUGH,  
SHO, PS: RAI  
SONIPAT.

2. VIKAS GARG S/O MOHAN LAL	ACCUSED NO. 3	APPELLANT	RESPONDENT NO 2
--------------------------------	---------------	-----------	--------------------

HOUSE NO. 2351,  
SECTOR 15, SONIPAT,  
HARYANA

ALL RESPONDENTS ARE CONTESTING

**SPECIAL LEAVE PETITION AGAINST THE INTERIM ORDER  
AND JUDGMENT DATED 13/9/2017 PASSED BY THE HIGH  
COURT OF PUNJAB AND HARYANA AT CHANDIGARH IN CR.  
M. NO. 23962 OF 2017 IN CR. A. NO. S-2396-SB OF 2017  
TITLED AS "VIKAS GARG V. STATE OF HARYANA".**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Order XXII Rule 1 (1)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2017

**BETWEEN:**

**POSITION OF PARTIES**

	IN TRIAL COURT	IN HIGH COURT	IN THIS COURT
Ms. "X"	COMPLAINANT	COMPLAINANT	PETITIONER

DETAILS  
WITHHELD

**Versus**

1. THE STATE OF HARYANA	PROSECUTION	RESPONDENT	RESPONDENT NO 1
-------------------------------	-------------	------------	--------------------

THROUGH,  
SHO, PS: RAI  
SONIPAT.

2. KARAN S/O GULSHAN	ACCUSED NO. 2	APPELLANT	RESPONDENT NO 3
-------------------------	---------------	-----------	--------------------

HOUSE NO. 215,  
SECTOR 14, SONIPAT,  
HARYANA

ALL RESPONDENTS ARE CONTESTING

**SPECIAL LEAVE PETITION AGAINST THE INTERIM ORDER  
AND JUDGMENT DATED 13/9/2017 PASSED BY THE HIGH  
COURT OF PUNJAB AND HARYANA AT CHANDIGARH IN  
CR.M.NO. 26910-11 OF 2017 IN CR.A.NO. D-653-DB OF  
2017 TITLED AS "KARAN V. STATE OF HARYANA".**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Order XXII Rule 1 (1)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2017

**BETWEEN:**

**POSITION OF PARTIES**

	IN TRIAL COURT	IN HIGH COURT	IN THIS COURT
Ms. "X"	COMPLAINANT	COMPLAINANT	PETITIONER

DETAILS  
WITHHELD

**Versus**

1. THE STATE OF HARYANA	PROSECUTION	RESPONDENT	RESPONDENT NO 1
-------------------------------	-------------	------------	--------------------

THROUGH,  
SHO, PS: RAI  
SONIPAT.

2. HARDIK S/O RAJEEV KUMAR	ACCUSED NO. 1	APPELLANT	RESPONDENT NO 4
-------------------------------	---------------	-----------	--------------------

HOUSE NO. 145,  
MOHANPURA,  
POLICE STATION CIVIL LINE,  
SONIPAT, HARYANA

ALL RESPONDENTS ARE CONTESTING

**SPECIAL LEAVE PETITION AGAINST THE INTERIM ORDER  
AND JUDGMENT DATED 13/9/2017 PASSED BY THE HIGH  
COURT OF PUNJAB AND HARYANA AT CHANDIGARH IN  
CR.M.NO.26930 OF 2017 IN CR.A.NO. D-662 OF 2017  
TITLED AS "HARDIK V. STATE OF HARYANA".**

To,

The Hon'ble Chief Justice of India and his companion justices.

The Humble petition of the Petitioner above named:

**RESPECTFULLY SHOWN:**

1. This SLP is directed against the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab & Haryana at Chandigarh in each of the three applications preferred by the convicts/respondents 2-4 for suspension of their sentences in their respective appeals filed before the High Court against the trial court's judgment dated 24/5/2017 on conviction and judgment dated 26/5/2017 on sentencing. A table detailing sentences passed against each of the convicts by the trial court is as follows:

<b>Name of convict</b>	<b>Offences</b>	<b>Period of rigorous imprisonment</b>	<b>Fine imposed</b>	<b>Sentence in default of fine</b>
<b>Vikas/ Respondent no. 2</b>	376 IPC r/w 120- B IPC	7 years	10,000/-	10 months
	292 r/w 34 IPC	2 years	2,000/-	2 months
	67-A IT Act, 2000	5 years	50,000/-	5 months
<b>Karan/ Respondent no. 3</b>	376 (D) IPC	20 years	20,000/-	1 year
	376 (2) (n) r/w 120-B IPC;	10 years	10,000/-	10 months

	292 r/w 34 IPC	2 years	2,000/-	2 months
	67-A IT Act.	5 years	50,000/-	5 months
<b>Hardik/ respondent no. 4</b>	376 (D) IPC	20 years	20,000/-	1 year
	376 (2) (n) IPC;	10 years	10,000/-	10 months
	120-B IPC	7 years	10,000/-	10 months
	292 r/w 34 IPC	2 years	2,000/-	2 months
	506 IPC	2 years	2,000/-	2 months
	67-A IT Act.	5 years	50,000/-	5 months

1A. While suspending the sentences of the convicts/respondents 2-4 as aforesaid, the High Court relied upon a few extracts from the evidence of the victim without referring to the context in which they appear and the explanation provided by the victim which accompany such extracts. Also, while suspending their sentences as aforesaid, the High Court passed several remarks upon the general character of the victim by describing her conduct as “promiscuous”. Moreover, the High Court made wholly unwarranted observations to the effect that the complainant indulged in “casual sex”, “adventurism” and “experimentation in sexual encounters”

1B. No writ appeal or LPA lies against the impugned order of the High Court dated 13/9/2017.

2.

**QUESTIONS OF LAW:**

A. Whether the High Court, in the facts and circumstances of the case, erred in entertaining the applications for suspension of sentences of the convicts/respondents 2-4 when clinching evidence appeared in the trial regarding commission of gruesome rape of a college-going student by them in diabolic manner?

B. Whether the High Court, in the facts and circumstances of the case, erred in suspending the sentences of the convicts/respondents 2-4 by selectively relying upon a few extracts from the evidence of the victim/petitioner without considering the evidence as a whole?

C. Whether the High Court, in the facts and circumstances of the case, erred in passing remarks on the character of the victim which is wholly irrelevant for the adjudication of appeals of the convicts/respondents 2-4?

D. Whether the High Court, in suspending the sentences of the respondents 2-4, exceeded the scope of proceeding under section 389 of the Cr.P.C. by venturing to engage in detailed re-appreciation of evidence?

E. Whether the conclusion arrived at by the High Court, based on selective reliance on the testimony of the victim/petitioner, that she could have engaged in consensual sex with respondents 2-4 runs contrary to Section 114 A of the Indian Evidence Act?

F. Whether the High Court erred in arriving at prejudicial and defamatory findings of fact on the character of the victim/petitioner, thus violating her right to a fair hearing in appeal?



3. **DECLARATION IN TERMS OF RULE 2(2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by her against the impugned order and judgment dated 13/9/2017.

4. **DECLARATION IN TERMS OF RULE 4:**

The Annexures P-1 to P-10 produced along with the Special Leave Petition are certified copies/true copies/true translated copies of the pleadings / documents which form part of the records of the case in the Court below, against whose orders, the leave to appeal is sought for in this petition.

5. **GROUND:**

**A. THAT** the impugned order passed by the High Court is perverse and is liable to be set aside as such as High Court has suspended sentences of the convicts/respondents 2-4 by placing selective reliance on certain extracts from the evidence of the victim/petitioner and not the evidence as a whole. Further, by selectively placing reliance on such extracts from the evidence of victim, certain remarks have been passed by the Court against the victim/petitioner. The remarks passed against the victim/petitioner tend to show her character in bad light, which remarks are wholly unwarranted for the purpose of hearing of the applications of the convicts/respondents 2-4 for suspension of their sentences. The said remarks also tend to prejudice the hearing of the appeal in favour of the convicts/respondents 2-4 and against the victim. The High Court has observed the following in the impugned order:

“XXX.

*We have considered the arguments of the learned counsel and have thought it prudent to refer to the statement of the prosecutrix and her cross-examination in extenso to gain and give an insight into the immature but nefarious world of youngsters unable to comprehend the worth of a relationship based on respect and*

*understanding. The entire crass sequence actually is reflective of a degenerative mind-set of the youth breeding denigrating relationships mired in drugs, alcohol, casual sex escapades and a promiscuous and voyeuristic world.*

*XXX.*

*The testimony of the victim does offer an alternate story of casual relationship with her friends, acquaintances, adventurism and experimentation in sexual encounters and these factors would therefore, offer a compelling reasons to consider the prayer for suspension of sentence favourably particularly when the accused themselves are young and the narrative does not throw up gut wrenching violence, that normally precede or accompany such incidents.*

*XXX.*

*We are conscious of the fact that allegations of the victim regarding her being threatened into submission and blackmail lends sufficient diabolism to the offence, but a careful examination of her statement again offers an alternate conclusion of misadventure stemming from a promiscuous attitude and a voyeuristic mind. She states that ‘he (Hardik) then sent his own nude pictures and coaxed me into sending my own nude pictures’ The perverse streak in both is also revealed from her admission that sex toy was suggested by Hardik and her acceptance of the same.*

*XXX.”*

**B. THAT** the High Court selectively extracted certain portions of the testimony of the prosecutrix to observe that she drank beer, engaged in drugs and that condoms were found from her room during search in the university. The High Court then relied upon the said portions, without looking at the explanations attached to them as stated by the prosecutrix, to adversely comment upon the character of the prosecutrix as “promiscuous”. However, while adversely commenting upon the character of the prosecutrix/petitioner, the High Court gave a complete go-by to law as stated in the statute book. Section 53A, inserted in the Indian Evidence Act, 1872, after the 2013 amendment reads thus:

*“53A. Evidence of character or previous sexual experience not relevant in certain cases.- In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D or section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of*

*such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”*

The aforesaid provision makes the position clear that any evidence of the character or previous sexual experience of the victim with any person is not relevant on the issue of consent or quality of consent in a trial for rape or sexual harassment. Thus, the remarks made by the High Court regarding “casual relationship”, “adventurism” and “experimentation in sexual encounters” on the part of the victim are wholly unwarranted and vitiate the impugned order.

**C. THAT** the High Court completely lost sight of the law laid down by the Supreme Court even before the aforesaid amendment in 2013 carried out in the Indian Evidence Act. This Court in ***State of Haryana v. Prem Chand, (1990) 1 SCC 249*** in para 10 noted the following:

*“10. .... this Court was of the view that the character or reputation of the victim has no bearing or relevance either in the matter of adjudging the guilt of the accused or imposing punishment under section 376, Indian Penal Code. We would like to state with all emphasis that such factors are wholly alien to the very scope and object of section 376 and can never serve either as mitigating or extenuating circumstances for imposing the sub-minimum sentence with the aid of the proviso to section 376(2) of the Indian Penal Code.”*

Thus, the Supreme Court clearly held that any imputation on character of the victim by any means is wholly irrelevant even for the purpose of sentencing, let alone conviction. In view of the aforesaid, any statement taken in isolation with respect to cigarettes being found from victim’s room, her taking drugs or drinking alcohol, is not at all relevant for the purposes of determining the guilt of the convicts and accordingly could not have led to accruing any benefit to them for the purpose of suspension of their sentences.

**D. THAT** the impugned order is perverse for non-consideration of the law of presumption regarding absence of consent of the prosecutrix in rape cases. Section 114A of the Indian Evidence Act, as introduced after the 2013 amendment provides the following:

*“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f) clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”*

Thus, the presumption of law is in favour of the evidence of the prosecutrix. However, in the instant case, the prosecution has been able to prove by cogent testimonies of witnesses, including the complainant, as aforesaid that there was a complete absence of consent. Therefore, the impugned order, in making such callous remarks against the victim has acted in contravention of the scheme of the legislation itself.

**E. THAT** the impugned order is liable to be set aside for misplaced reliance on few statements appearing in cross-examination of the victim taken in isolation to conclude that the incidents of rape were doubtful as the crime scenes were frequently surrounded by people. The victim/petitioner, in her examination-in-chief had stated that the incidents of rape, between August, 2014, and December, 2014, took place after 10 p.m. in the Pilot Room of the Helipad (of the university campus), the nursery, behind the helipad, in the guard-box situated in the football field and in the academic block washroom. In the cross-examination, the victim had stated that CCTV cameras were installed in some places in the university campus including outside academic block. The victim had stated that she was aware about one flood light which is installed in football ground and one flood light near

helipad on the left side, if one faces the helipad. The victim had then stated that one small room called Pilot-Room is situated inside the helipad. The victim stated that Tennis Court and the basketball court are situated near the helipad. The victim also stated that sometimes, the students played in the said courts till late night. The victim had also stated that badminton court, which is situated in the helipad, is mostly used by the faculty members and students. The victim stated that at most times, the students played till 1 a.m. Going by the said statements in the cross-examination of the victim, the High Court concluded that incidents of rape at such places were doubtful. However, the High Court did not consider that there was no lighting of the Pilot-Room or the nursery, behind the helipad. Further, the High Court did not consider that there was no CCTV inside the washroom of the academic block. Thus, the High Court hurriedly came to the aforesaid conclusion without rendering any thought to the holistic reading of the evidence.

**F. THAT** the impugned orders are liable to be set aside as they are contrary to established canons of criminal law in the country. It is trite law that suspension of sentence is not the norm but an exception. Further, discretion to suspend sentence of a convict is a guided discretion to be exercised by due application of mind and resorting to the relevant factors such as gravity of the offence. In the present case, the High Court has, on the basis of selective reading of the testimony of the prosecutrix, has suspended sentences of the convicts/respondents 3-4 who have been convicted for the gruesome crime of gang rape of a college-going girl and of respondent no. 2 who has convicted for raping the victim. The High Court completely lost sight of the fact that the convicts/respondents 2-4, in furtherance of their diabolical design, compelled the prosecutrix to have sex with them under the threat of making her nude pictures public. Thus, the High Court ought not to have exercised its discretion to suspend the sentences of

such diabolic criminals committing such abhorrent crimes shaking the very conscience of the society.

**G. THAT** the impugned orders are liable to be set aside as they tend to make certain observations therein which tend to touch the conclusion of the appeal and will have bearing upon the same. In fact, by stating that an alternate story emerges from the reading of the evidence of the victim/petitioner, the High Court has virtually altered the finding of fact by the trial court which could only have been rendered upon the conclusion of the appeal.

**H. THAT** the impugned orders are liable to be set aside for their misplaced reliance on the aspect of reformation of the convicts/respondents 2-4. It is trite law that need for reformation of convicts can never supersede the need of the society for prevention of future crimes and for its retribution. The manner of commission of the offence and the design behind the said commission clearly show that the convicts/respondents 2-4 are beyond reformation. This Court has repeatedly held that misplaced sympathy for convicts who commit gruesome crimes against the society at large only defeats the ends of justice. Moreover, there is grave probability that the convicts/respondents 2-4 will continue in their criminal ways in society after being enlarged on bail, given the diabolic manner of commission of the offence at hand. Thus, the presence of convicts/respondents 2-4 at large is only detrimental to the interests of the society. It is imperative in the interests of society at large that attempts are first made to ascertain the psychological make-up of the convicts inside the prison and to put them through sufficient surveillance before any decision is made to let them mix with the society. The aforesaid holds true more so when sufficient mechanisms exist inside the prisons for reformation of the convicts. If reformation is made the yardstick to enlarge convicts by suspension of sentences, then no convict would undergo the sentence imposed. There are adequate facilities in the form of parole which are availed of by convicts in order to keep their touch with society intact.

**I. THAT** the impugned order is liable to be set aside as the High Court lost sight of the fact that the convicts/respondents 2-4 are flight risks and will evade the justice system once they are enlarged on bail. The three accused persons belong to influential families of Sonipat, Haryana, making it highly probable for them to evade the rigorous sentences of 20 years each imposed on respondents 3-4 and 7 years on respondent no 2. The High Court did not consider that the convicts/respondents 3-4 were denied bail during the trial by the High Court as there was considerable risk of convicts influencing the prosecutrix or evading the process. The High Court had denied the respondents 3-4 bail even when there was presumption of innocence being accused in the trial court. Thus, when the convicts have been convicted of the offences as aforesaid by the trial court and when the risk of flight and intimidating the victim remains the same, the convicts could not have been enlarged on bail pending their appeal in the High Court. Moreover, the High Court did not take into account the fact that the convicts had not given the passwords for their respective phones to the police authorities due to which they could not be opened. As the fact of nude pictures being disseminated by the convicts in the “WhatsApp” application stands proved in the trial, it is axiomatic that the convicts will still have access to their respective “Cloud accounts” which is a form of online storage on the internet. Thus, there is great element of risk in enlarging the convicts at this stage as there is likelihood that they will access the nude pictures of the victim and will use them for their nefarious purposes.

**J. THAT** the impugned orders are liable to be set aside as they do not consider the clinching evidence that appears against the convicts/respondents 2-4 which was relied upon by the trial court to find them guilty. The testimony of the prosecutrix (PW-1) has been consistent in substance throughout her evidence. The said testimony detailed the dates of incidents as well as the places (PW-1/G & PW-28/A-site plans) where the offences were committed upon her. By selectively relying upon the testimony of the

prosecutrix to hold existence of an alternate story in favour of convicts, the High Court has actually equated the complainant with an accomplice which equation militates against the well-established canons of law in cases of sexual assault. It is trite law that a complainant's testimony in court is sufficient to lead to guilt of the accused and to ask for further corroboration for the same is to equate her to an accomplice which amounts to causing further violence to her. Thus, by no means, could the High Court come to a conclusion by selective extraction of the testimony of the prosecutrix, and that too for the purpose of hearing application for suspension of sentence, that the evidence against the convicts seemed doubtful.

**K. THAT** the High Court completely lost sight of the adequate corroboration to the testimony of the prosecutrix/petitioner which further fortifies the clinching evidence against the convicts/respondents 2-4. The trial court had dealt with the conversation between the convict/respondent no 4 and the prosecutrix/petitioner in the form of messages ("WhatsApp chats") which were exhibited as P-Z/3 to P-Z/237 duly proved by PW-2 (officer of the CFSL, Chandigarh) and also as Ex. PW-1/D. The said messages, recovered from the phone of the prosecutrix, showed, in a gory and graphic manner, the extent of torture borne by the prosecutrix at the hands of the convicts. The said messages were relied upon by the trial court to hold that the prosecutrix was repeatedly raped by the convicts on the threat of making her nude pictures in their possession public. The said messages are rife with the most filthy abuses which a person could be subjected to; all of which silently borne by the prosecutrix to avoid the shame of her nude pictures being published. However, the High Court makes no reference to the said evidence while venturing to call the conduct of the prosecutrix "promiscuous". The High Court has made a careless observation regarding the victim buying a "sex toy" to deplore her conduct. However, the said observation has been passed in complete ignorance of the enormous resistance made by the victim when the respondent no. 4 was repeatedly forcing her to



buy the said “sex toy”. The said fact of the enormous resistance of the victim to buy the said “sex toy” at the behest of the respondent no. 4 and the consequent inhuman humiliation and harassment faced by her from respondent no. 4 is evident from a bare perusal of the said “WhatsApp” messages, which have been downrightly ignored by the High Court. Such non-application of mind while dealing with such a sensitive issue involving permanent scarring of the victim’s life is clearly deplorable.

**L. THAT** the impugned order is completely silent on the aspect of conviction of the respondents 2-4 under Section 292, IPC, and Section 67-A of the Information Technology Act, 2000, both of which are independent heinous offences. The trial court found the respondents as aforesaid guilty for dissemination of nude pictures of the victim amongst the group of their friends on the mobile phone application “WhatsApp” and hence imposed sentence of 5 years and Rs. 50,000/- on each of them under Section 67-A, IT Act. Further, sentence of 2 years and fine of Rs. 2,000/- has been imposed upon each convict for the offence punishable under Section 292 IPC. The unfair selective extraction of the evidence of the prosecutrix has been carried out by the High Court for the purpose of doubting the commission of rape upon the victim. However, the commission of crime under Section 67-A of the Information Technology Act, 2000, or Section 292 IPC, has not even been discussed, let alone doubted by the High Court. Moreover, the convicts/respondents 2-4 did not even argue on the aspect of Section 67A, IT Act, or Section 292 IPC, before the trial court or before the High Court for the purpose of suspension of their sentences. Therefore, there was no justification for the High Court to suspend the sentence of 5 years and fine of Rs. 50,000/- imposed on each of the convicts/respondents 2-4 as against the commission of the said crime under Section 67A of the IT Act, as the same has not even doubted by the High Court. The failure to deal with the aspect of guilt of the respondents 2-4 as against Section 67A of the IT Act, or Section 292 IPC, shows the utter non-application of mind and the undue haste on the part of the High

Court to suspend the sentences of the respondents 2-4. Therefore, the High Court was wholly unjustified in suspending sentences of the convicts/respondents 2-4 as against their conviction under Section 292 IPC and Section 67A IT Act for which sentence of 5 years has been imposed upon each one of them.

**M. THAT** the impugned order is liable to be set aside for want of hearing given to the public prosecutor to oppose the suspension of sentences of the respondents 2-4 as is required by the Proviso to subsection (1) of Section 389 Cr.P.C. The said provision mandates that while considering an application for suspension of sentence under Section 389 Cr.P.C., the Court must give *the public prosecutor an opportunity to show cause in writing against such release*. The fact that the High Court does not even mention a single argument raised by the public prosecutor against the release of the respondents 2-4 clearly evidences non-application of mind and absence of effective opportunity to the State as mandated by the Code. The absence of an opportunity to show cause against the release of the respondents 2-4 and/or non-consideration of the same is a fundamental error that vitiates the impugned order.

**N. THAT** the impugned order is based on considerations which are alien to the requirements of Section 389 Cr.P.C. The Impugned Order states “*Indeed all these transgressions if established would demand retributive justice at the time of decision of the appeal but while dealing with an issue of suspension of sentence, we are constrained to not only keep in mind the gravity of the offence, but also to strike a balance between the retributory reformatory and rehabilitative justice*”. It is submitted that while considering the appropriate quantum of sentence, a trial court must necessarily strike a balance between retributory, reformatory and rehabilitative justice. However, these considerations are wholly extraneous and irrelevant for the purpose of suspension of sentence under Section 389 Cr.P.C. The primary consideration for release under Section 389 Cr.P.C. is whether there is substantial doubt regarding conviction, the nature of the offences charged, manner of

commission of crime, the gravity of the offence and the desirability of releasing the accused after they have been convicted of a serious offence. The question of suspension of sentence is focused wholly on the merits of conviction and considerations that influence quantum of sentence are wholly immaterial. Thus, the very basis of the impugned order suffers from infirmity and thus is liable to be set aside.

**6. GROUNDS FOR INTERIM RELIEF:**

A. Because the Petitioner has *prima facie* case, in as much, the impugned order passed by the High Court is wholly against the weight of evidence and materials before it;

B. Because, irreparable loss will be caused to the petitioner and to the society at large if the impugned order is not stayed.

C. Because, in the present facts and circumstances, balance of convenience also greatly lies in favour of the Petitioner as against the convicts/respondents 2-4.

**7. PRAYERS**

In the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Grant the special leave to appeal against the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab and Haryana at Chandigarh in Cr. M. NO. 23962 of 2017 in Cr. A. No. S-2396-SB of 2017 titled as "Vikas Garg v. State of Haryana"; Cr.M.No. 26910-11 of 2017 in Cr.A.No. D-653-DB of 2017 titled

as “Karan v. State of Haryana”, and; Cr.M.No.26930 of 2017 in Cr.A.No. D-662 of 2017 titled as “Hardik v. State of Haryana”;

b) Pass such other and further orders as this Court may deem fit and proper in the interests of justice.

**8. INTERIM PRAYER:**

a) pass an ad-interim, ex-parte order staying the operation of the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab and Haryana at Chandigarh in Cr. M. NO. 23962 of 2017 in Cr. A. No. S-2396-SB of 2017 titled as “Vikas Garg v. State of Haryana”; Cr.M.No. 26910-11 of 2017 in Cr.A.No. D-653-DB of 2017 titled as “Karan v. State of Haryana”, and; Cr.M.No.26930 of 2017 in Cr.A.No. D-662 of 2017 titled as “Hardik v. State of Haryana”.

b) Pass such other order and further order(s) as this Hon’ble Court may deem fit and necessary in the interest of justice.

**FILED BY:**

ROHIT KUMAR SINGH

**ADVOCATE FOR THE PETITIONER**

Drawn by: PRASHANT MENDIRATTA & HARSHVARDHAN PANDEY

Drawn on: .9.2017

Filed on: .09.2017

**IN THE SUPREME COURT OF INDIA**

(CRIMINAL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CRIMINAL) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

Ms. "X"

...PETITIONER

**VERSUS**

The State of Haryana etc. etc.

...RESPONDENTS

**CERTIFICATE**

Certified that the Special Leave Petition is confined only to the Pleadings before the High Court, whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of documents/Annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the Petition or to make out grounds urged in Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the person authorized by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

FILED BY:

ROHIT KUMAR SINGH

**ADVOCATE FOR THE PETITIONER**

Drawn by: PRASHANT MENDIRATTA & HARSHVARDHAN PANDEY

Drawn on: .9.2017

Filed on: 09.2017

**IN THE SUPREME COURT OF INDIA**

(CRIMINAL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CRIMINAL) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

Ms. "X"

...PETITIONER

**VERSUS**

The State of Haryana etc. etc.

...RESPONDENTS

**AFFIDAVIT**

I, Ms. "X", (Details withheld), do hereby solemnly affirm and declare as under:-

1. That I am Petitioner in the special leave petition and as such am conversant with facts and circumstances of the case and as such am competent to swear the present affidavit.
2. That the contents of the Synopsis and List of Dates from pages B to .....and those of paras 1, 2 and 4 of the special leave petition from pages .....to .....are facts true to my knowledge and those of Paras 3 and 5, 6-8 of the special leave petition contains submissions and prayers to this Hon'ble Court based on legal advice received from the Advocate on Record and same is believed to be true and correct.
3. That the contents of Para 1 to ..... of the application for seeking permission for filing special leave petition are facts

true to my knowledge based on the records of the case and rest of the application are submissions and prayers made before this Hon'ble Court.

4. That the annexures filed along with the special leave petition are the certified copies/true copies/true translated copies of their respective originals.

DEPONENT

VERIFICATION:

Verified on this .....day of ....., 2017 at .....that the contents of the above affidavit are true and correct to the best of my knowledge and that no part of it is false and nothing material has been concealed there from.

DEPONENT

**APPENDIX –I**

**RELEVANT PROVISIONS OF THE CODE OF CRIMINAL  
PROCEDURE, 1973**

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub- section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

TRUE COPY



## APPENDIX-II

### RELEVANT PROVISIONS OF THE CODE OF INDIAN PENAL CODE, 1860

120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, <sup>2</sup>[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

292. Sale, etc., of obscene books, etc.- (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception.--This section does not extend to--

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure--

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art of learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in--

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

375. A man is said to commit "rape" if he—

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or
- d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— First.—Against her will. Secondly.—Without her consent.

Third/y.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourth/y.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that

he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation I.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

### **Punishment for rape.**

376.

1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not

be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever,—

- a. being a police officer, commits rape—
  - i. within the limits of the police station to which such police officer is appointed; or
  - ii. in the premises of any station house; or
  - iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
- b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- g. commits rape during communal or sectarian violence; or
- h. commits rape on a woman knowing her to be pregnant; or

- i. commits rape on a woman when she is under sixteen years of age; or
- j. commits rape, on a woman incapable of giving consent; or
- k. being in a position of control or dominance over a woman, commits rape on such woman; or
- l. commits rape on a woman suffering from mental or physical disability; or
- m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

- a. "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Jaw for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government!, or the State Government;
- b. "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- c. "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;
- d. "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women

or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

**Gang rape.**

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

TRUE COPY

**APPENDIX-III**

**RELEVANT PROVISIONS OF THE INFORMATION  
TECHNOLOGY ACT, 2000**

67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

*True Copy*



**IN THE SUPREME COURT OF INDIA**  
(CRIMINAL APPELLATE JURISDICTION)

CrI. M.P. No. \_\_\_\_\_ OF 2017

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

Ms. "X"

...PETITIONER

**VERSUS**

The State of Haryana etc. etc.

...RESPONDENTS

**APPLICATION SEEKING PERMISSION TO FILE THE**  
**SPECIAL LEAVE PETITION**

To,

The Hon'ble Chief Justice of India

And the Hon'ble Companion Judges.

Respectfully shown:

1. This SLP is directed against the interim order and judgment dated 13/9/2017 passed by the High Court of Punjab and Haryana at Chandigarh in Cr. M. NO. 23962 of 2017 in Cr. A. No. S-2396-SB of 2017 titled as "Vikas Garg v. State of Haryana"; Cr.M.No. 26910-11 of 2017 in Cr.A.No. D-653-DB of 2017 titled as "Karan v. State of Haryana", and; Cr.M.No.26930 of 2017 in Cr.A.No. D-662 of 2017 titled as "Hardik v. State of Haryana").

2. That all the facts leading to filing of this petition have been set out in detail in the accompanying Special Leave

Petition and the same are not being repeated herein for the sake of brevity.

3. That the victim/petitioner was heard during the hearing of application for suspension of sentences of the convicts/respondents 2-4 pursuant to which the impugned order was passed.

4. That the petitioner is gravely prejudiced by the impugned judgment/order as aforesaid and hence, seeks permission to assail them in the present SLP.

**P R A Y E R**

In the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) pass an order permitting the petitioner to file the present SLP.
- (b) Pass such other or further order (s) as this Hon'ble Court may deem fit in the peculiar facts and circumstances of the case in favour of the Petitioner.

FILED BY:

ROHIT KUMAR SINGH

ADVOCATE FOR THE PETITIONER

Drawn by: PRASHANT MENDIRATTA & HARSHVARDHAN  
PANDEY

Drawn On: \_\_.9.2017

Filed On: \_\_.9.2017