

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL ORIGINAL JURISDICTION**

**WRIT PETITION (CRL.) NO.314/2022**

**MAHENDRA VISHWANATH KAWCHALE  
AND ANR.**

**...PETITIONERS**

**VERSUS**

**UNION OF INDIA**

**...RESPONDENT**

**O R D E R**

This writ Petition is filed under Article 32 of the Constitution of India by way of a Public Interest Litigation assailing the constitutional validity of Section 376DA of the Indian Penal Code, 1860 (IPC), as inserted by Criminal Law (Amendment) Act, 2018, as being violative of Articles 14 and 21 of the Constitution of India and hence, a declaration to the effect that it is unconstitutional has been sought.

2. We have heard Sri Siddharth Agarwal, learned senior counsel appearing for the impleading applicant in IA No.147023 of 2022 for National Law University, Delhi, Project 39A, through Executive Director. There is no representation by the petitioners who have filed this petition in-person.

3. The issues and contentions raised by the petitioner, who has filed this Writ Petition in-person and the contentions raised in the impleading application (IA No.147023 of 2022) are almost identical. The impleading applicant is supporting the petitioner, who has filed this Writ Petition as a Public Interest Litigation.

4. Having heard Sri Siddharth Agarwal, learned senior counsel and learned Attorney General as well as learned Additional Solicitor General and other instructing counsel appearing for the respective parties, we note the provision of Section 376DA IPC, which is extracted as under:

**“376DA-Punishment for gang rape on woman under sixteen years of age** - Where a woman under sixteen years of age 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 imprisonment for 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”

5. The bone of contention is with regard to the expression *“shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life”*.

6. Learned senior counsel submitted that the use of the expression “shall” would indicate that the only punishment which can be imposed by a Sessions Court is imprisonment for life which shall mean imprisonment for the remainder of that persons’ natural life and, therefore, there is no alternative punishment which can be imposed by a Sessions Court. It was submitted that the use of the expression “shall” in juxtaposition with imprisonment for life which is qualified by expression “for remainder of that person’s life”, would mean that a Sessions Court has no other option except to impose imprisonment for life which would mean as qualified above and that there can be no other alternative punishment which the Sessions Court could impose. It was submitted that such a punishment is against the tenets of sentencing policy and in the absence of there being any alternative punishment, is egregious and arbitrary. It was further submitted that such a sentence would imply that there can be no mitigating circumstances which

could be considered insofar as the accused is concerned, and no lesser punishment than imprisonment for life, which would mean the remainder of that person's natural life, could be imposed along with fine. It was, therefore, submitted that the writ petitioner has rightly challenged the constitutional validity of the said provision and the impleading applicant would support the writ petitioner.

7. *Per contra*, learned Attorney General along with learned Additional Solicitor General and other counsel supported Section 376DA IPC. It was contended that the said punishment is imposed on persons who have committed gang rape on a woman under sixteen years of age which means a juvenile or minor child and having regard to the egregious nature and seriousness of the crime, the Parliament in its wisdom has chosen to impose such a strict punishment. It is the policy of the Parliament in selecting such a sentence having regard to the gravity and seriousness of the offence. Therefore, the writ petitioner as well as the impleading applicant cannot have any grievance with regard to the prescription of such a sentence by the Parliament. Hence, there is no merit in the Writ Petition as

well as in the arguments advanced by the learned senior counsel for the impleading applicant.

8. We have considered the arguments advanced at the bar.

9. We take note of two aspects.

9.1 The first aspect is with regard to the punishment that is prescribed under Section 376DA IPC which has to be imposed on the judicial side on conclusion of the trial by the Sessions Court and which could be challenged by the accused before an appellate Court (the High Court) which is also a Constitutional Court and if unsuccessful also by filing a Criminal Appeal before the Supreme Court which is also a Constitutional Court. That is one aspect of the matter.

9.2 The other aspect of the matter is even if such a punishment is imposed on an accused, he has the right of remission in accordance with Article 72 and/or Article 161 of the Constitution of India, as the case may be, by making an application for remission before the Hon'ble President of India or before the Governor of a State. Those are constitutional remedies.

9.3 In addition, such an accused has also a statutory remedy to seek remission of his sentence by making an application within the statutory scheme of Section 432 and connected provisions of the Code of Criminal Procedure, 1973 (CrPC) subject to Section 433A CrPC and other equivalent provisions of Section 473 and Section 475 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”).

9.4 Therefore, the right to seek remission is not only a constitutional right but also a statutory right and each State has its own policy of remission, which is a reduction in the sentence, even in cases of death penalty or life imprisonment and is applicable even when the sentence is imposed under Section 376DA IPC or for that matter 376DB IPC. For the ease of reference, Section 376DB IPC is extracted as under:

**“376DB: Punishment for gang rape on woman under twelve years of age** - Where a woman under twelve years of age 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

imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death

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.”

9.5 Therefore, even in a case where a punishment is awarded under Section 376DA or Section 376DB IPC to the effect that the accused shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life would not take away his right to seek remission in accordance with the Constitution or the statutory scheme as under the CrPC or BNSS and the applicable policy of remission of each State.

10. Insofar as the contention of learned senior counsel for the petitioner on the aspect that the prescription of a single sentence under Section 376DA IPC without any alternative sentence being provided and the use of the expression “shall” makes it mandatory on the Sessions Court is concerned, we leave the said question of law open to be agitated in any

appropriate case.

11. We say so for the reason that in a vacuum, in the absence of facts of a case, in a Public Interest Litigation, we do not wish to adjudicate on the validity of the said provision.

12. Therefore, keeping open the question of law to be advanced in an appropriate case, we dispose of this Writ Petition and the impleading application (IA NO.147023 of 2022).

....., J.  
(B. V. NAGARATHNA)

....., J.  
(R. MAHADEVAN)

**NEW DELHI;  
SEPTEMBER 2, 2025.**



ITEM NO.9

COURT NO.3

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(S). 4703/2024

NIKHIL SHIVAJI GOLAIT

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

WITH

W.P.(CrI.) No. 184/2022 (X)  
FOR ADMISSION

W.P.(CrI.) No. 314/2022 (PIL-W)  
FOR CONDONATION OF DELAY IN FILING ON IA 181672/2023  
IA No. 181672/2023 - CONDONATION OF DELAY IN FILING  
IA NO. 147023/2022 - APPLICATION FOR IMPEADMENT/INTERVENTION

Date : 02-09-2025 These matters were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) : Petitioner-in-person

Mr. Gaurav Agrawal, Sr. Adv.  
Mr. Rajendra M Daga, Adv.  
Mr. Manan Daga, Adv.  
Mr. C. George Thomas, AOR

Mr. Siddharth Aggarwal, Sr. Adv.  
Mr. Mahfooz Ahsan Nazki, AOR  
Mr. Vishwajeet Bhati, Adv.  
Ms. Manasa Ramakrishna, Adv.  
Mr. Vivek Rajan D.b, Adv.  
Mr. Hemant Gupta, Adv.

Mr. Shreya Rastogi, Adv.

Mr. Vishwajeet Bhati, Adv.  
Mr. Manasa Ramakrishna, Adv.  
Mr. Karan Dalla, Adv.

For Respondent(s) : Mr. R. Venkataramani, Attorney General  
for India

Mr. Tushar Mehta, Solicitor General  
Mrs. Aishwarya Bhati, A.S.G.  
Mr. Padmesh Mishra, Adv.  
Mr. Pratyush Shrivastava, Adv.  
Mr. Arkaj Kumar, Adv.  
Mr. Rajat Nair, Adv.  
Mr. Mayank Pandey, Adv.  
Mr. Neelakshi Bhadauria, Adv.  
Mr. Kartikay Aggarwal, Adv.  
Mr. Ameyavikrama Thanvi, Adv.  
Mr. Chitvan Singal, Adv.  
Mr. Abhishak Kr. Pandey, Adv.  
Dr. N. Visakamurthy, AOR

Mr. K M Nataraj, A.S.G.  
Mr. Shailesh Madiyal, Adv.  
Mr. Shuvodeep Roy, Adv.  
Mr. Merusagar Samantray, Adv.  
Mr. Sabarish Subramanian, Adv.  
Mr. Abhishek Kumar Pandey, Adv.  
Mr. Raman Yadav, Adv.  
Mr. Chitvan Singhal, Adv.  
Mr. Kartikey Aggarwal, Adv.  
Mr. Mukesh Kumar Singh, Adv.  
Ms. Ameyavikrama Thanvi, Adv.  
Mr. Arvind Kumar Sharma, AOR

Mr. Aaditya Aniruddha Pande, AOR  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Shrirang B. Verma, Adv.  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.  
Mr. Adarsh Dubey, Adv.  
Ms. Chitransha Singh Sikarwar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

CRIMINAL APPEAL NO(S).4703/2024 AND W.P.(CrI.) No.184/2022:

List on 14.10.2025.

W.P.(CRL.)NO.314 OF 2022:

IA No.147023 of 2022 is disposed of.

Writ Petition is disposed of in terms of the signed order, which is placed on file.

Pending application(s), if any, shall stand disposed of.

(B. LAKSHMI MANIKYA VALLI)  
COURT MASTER (SH)

(DIVYA BABBAR)  
COURT MASTER (NSH)