

Court No. - 80

Case :- CRIMINAL APPEAL No. - 272 of 2025

Appellant :- Mayank Alias Ramsharan

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Ghan Shyam Das

Counsel for Respondent :- G.A., Ram Badan Maurya

Hon'ble Rajeev Misra, J.

1. Heard Mr. Kamal Krishna, the learned Senior counsel assisted by Mr. Ghan Shyam Das, the learned counsel for applicant/appellant, the learned A.G.A. for State-opposite party-1 and Mr. Ram Badan Maurya, the learned counsel representing first informant-opposite party-4.

2. Perused the record.

3. Challenge in this criminal appeal is to the judgment and order dated 23.12.2024 passed by Additional Sessions Judge/Additional Special Judge (POCSO Act), Court No.-3, Firozabad in Sessions Case No. 1824 of 2023 (State Vs. Mayank @ Ramsharan) arising out of Case Crime No. 446 of 2023, under Section 376 IPC and Section 5(j)(ii)/6 POCSO Act, Police Station-Shikohabad, District-Firozabad.

5. By means of the impugned judgment and order dated 23.12.2024, applicant-appellant has been convicted under Section 376 IPC and Sections 5(j)(ii)/6 POCSO Act. Consequently applicant/appellant has been sentenced to 20 years rigorous imprisonment along with fine of Rs. 30,000/- for the offence under Section 5(j)(ii)/6 POCSO Act and in case of default in payment of fine, applicant-appellant is to undergo two years additional rigorous imprisonment.

6. Mr. Kamal Krishna, the learned Senior counsel for applicant/appellant submits that applicant-appellant was enlarged

on bail during the pendency of trial. In view of the impugned judgment and order passed by Court below, applicant-appellant was taken into custody on 23.12.2024 and since then, he is under incarceration. Accordingly, applicant/appellant has filed above-mentioned application for suspension of sentence seeking his enlargement on bail during the pendency of present appeal.

7. It is then submitted by the learned Senior counsel that though applicant-appellant is a named and convicted accused yet he is liable to be enlarged on bail during the pendency of present appeal. A very short and interesting question has been raised by the learned Senior counsel in challenge to the impugned order. According to the learned Senior counsel, it is an undisputed fact that during the pendency of proceedings, applicant/appellant had solemnized marriage with the prosecutrix in accordance with Hindu Rites and Customs. Accordingly, the prosecutrix became the legally wedded wife of applicant/appellant. As a result of above, the parties started living together as husband and wife. On account of co-habitation of applicant/appellant and the prosecutrix, one child namely Puneet was born. He, therefore, submits that in view of aforementioned subsequent event, the criminality, if any, committed by applicant/appellant stood washed of. However, Court below, in ignorance of aforesaid fact, has awarded conviction to applicant/appellant, which is per-se illegal. To buttress his submission, the learned Senior counsel has referred to the judgments of Supreme Court in (1) **K. Dhandapani Vs. State by the Inspector of Police, 2022 SCC OnLine SC 1056**, (ii) **Mafat Lal Vs. State of Rajasthan, (2022) 6 SCC 589** and (iii). **Criminal Appeal No. 41 of 2024 (Shriram Urav Vs. State of Chhattisgarh) decided on 30.01.2025**, wherein the Apex Court quashed the criminal prosecution of accused therein on the ground

that the accused therein had solemnized marriage with the prosecutrix and further Court cannot turn a blind eye to the said development. It is thus urged by the learned Senior counsel for applicant/appellant that since the present applicant/appellant has also solemnized marriage with the prosecutrix, as such, no exception can be carved out in the case of present applicant/appellant. The judgment rendered by the Apex Court in **K. Dhandapani (Supra)** is a short one, therefore, the same is reproduced in its entirety:-

"1. Leave granted.

2. The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

3. Mr. M.P. Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

4. The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

5. After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

6. Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

7. In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

8. For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

9. In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

8. In the aforementioned cases, the Apex Court quashed the proceedings pending against accused under the POCSO Act, even when the first child was delivered when the prosecutrix was aged about 15 years and the second child was delivered when the prosecutrix was aged about 17 years. Furthermore, the prosecutrix had solemnized marriage with her maternal uncle (Mama). Since the marriage solemnized by the parties was permissible as per the custom prevalent in the social scenario of the parties, therefore, the Court quashed the proceedings. On the above premise, the learned Senior counsel for applicant/appellant submits that the impugned judgment and order cannot be sustained and therefore, liable to be set aside by this Court. He, therefore, submits that since the appeal is prima-facie liable to be allowed, therefore, by reason of the law laid down by the Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and Another, (2023) 6 SCC 123**, applicant/appellant is liable to be enlarged on bail during the pendency of trial.

9. Even otherwise, applicant/appellant is a man of clean antecedents having no criminal history to this credit, except the present one. Applicant/appellant is in jail since 23.12.2024. As such, he has undergone more than 6 months of incarceration. In

case, applicant/appellant is enlarged on bail during the pendency of present appeal, then in that eventuality, he shall not misuse the liberty of bail and shall co-operate in the hearing of present appeal. It is thus contended by the learned Senior counsel that applicant/appellant is liable to be enlarged on bail.

10. Per contra, the learned A.G.A. for State-opposite party-1 and Mr. Ram Badan Maurya, the learned counsel representing first informant-opposite party-4 have vehemently opposed the prayer for bail. They submit that since applicant-appellant is a named and convicted accused, therefore, he does not deserve any indulgence by this Court. With reference to the imugned judgment and order, they submit that it is an undisputed fact that on the date, criminality was committed upon prosecutrix, she was a child within the meaning of the term child as defined in the POCSO Act. The prosecutrix was a young and innocent girl aged about 17 years and few months on the date of occurrence. In view of above, the criminality, if any, committed by applicant/appellant shall not get wiped out on account of subsequent event as sought to be urged by learned Senior counsel for applicant/appellant. They, therefore, submit that in view of above and coupled with the fact that offence complained of against applicant/appellant is not only illegal but also immoral, therefore, applicant/appellant does not deserve any indulgence by this Court. In face, offence complained of is a crime against society. However, they could not dislodge the factual and legal submissions urged by the learned Senior counsel for applicant/appellant in support of this application for suspension of sentence as noted herein above with reference to the record.

11. Having heard, the learned counsel for applicant-appellant, the learned A.G.A. for State-opposite party-1, Mr. Ram Badan

Maurya, the learned counsel representing first informant-opposite party-4 and upon perusal of record, evidence, nature and gravity of offence, complicity of accused/applicant/appellant, accusation made, this Court finds that applicant-appellant is a named and convicted accused, applicant/appellant was enlarged on bail during the pendency of trial, applicant/appellant has been convicted under Section 376 IPC and Section 5(j)(ii)/6 of the POCSO Act, admittedly, the prosecutrix was a child within the meaning of the term child as defined under the POCSO Act on the date, the alleged criminality was committed by applicant/appellant, inasmuch as, according to the date of birth of the prosecutrix as recorded in the High School Certificate, the prosecutrix was below 18 years of age, though offence complained of against applicant/appellant is not only illegal but also immoral inasmuch as, applicant/appellant is guilty of dislodging the modesty of the prosecutrix, who was a young and innocent girl below 18 years of age, however, it has come in evidence (i.e. in the deposition of the prosecutrix), who appeared before Court below as PW-1 (running page 51 of the paper book) that she has solemnized marriage with the applicant/appellant, therefore, in view of above, the criminality, if any, committed by applicant/appellant stood washed off, as such, the ratio laid down by the Apex Court in the cases of (1) **K. Dhandapani (Supra)**, (ii) **Mafat Lal Vs. State of Rajasthan (Supra)** and (iii). **Shriram Urav (Supra)** stands clearly attracted, moreover, from the wedlock of the applicant/appellant and the prosecutrix, a son was also born, the parties were living together as a happy family, the learned A.G.A. for State-opposite party-1 and Mr. Ram Badan Maurya, the learned counsel representing first informant-opposite party-4 could not point out from the record any such distinguishing feature on the

basis of which, the ratio laid down by the Apex Court in aforementioned judgment could be said to be inapplicable. the clean antecedents of applicant/appellant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. for State-opposite party-1 and Mr. Ram Badan Maurya, the learned counsel representing first informant-opposite party-4 in opposition to this application for suspension of sentence/prayer for bail, but without making any comments on the merits of appeal, this Court finds that applicant-appellant has made out a case for grant of bail.

12. In view of the discussion made above, this application for suspension of sentence/prayer for bail succeeds and is liable to be allowed.

13. It is, accordingly, **allowed**.

14. Let the **applicant/appellant-Mayank @ Ramsharan**, be released on bail in Case Crime No. 446 of 2023, under Section 376 IPC and Section 5(j)(ii)/6 POCSO Act, Police Station-Shikohabad, District-Firozabad on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned.

15. Considering the facts and circumstances of the case, as an interim measure, it is hereby provided that until further orders of this Court, the recovery of fine awarded by Court below under the impugned judgment shall remain stayed.

Order Date :- 2.7.2025

Vinay