2025 INSC 944

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3409/2025
(@SPECIAL LEAVE PETITION (CRL.) NO.11361/2025

AASIF @ PASHA **Appellant(s)**

VERSUS

THE STATE OF U.P. & ORS. **Respondent(s)**

O R D E R

1. Leave granted.

2. The impugned Order is one more from the High Court of Judicature at Allahabad with which we are disappointed.

3. This petition arises from the order passed by the High Court of Judicature at Allahabad dated 29-5-2025 in Criminal Appeal No.8689/2024 by which the High Court declined to suspend the substantive order of sentence passed by the Trial Court.

4. It appears from the materials on record that the appellant was put to trial in the Court of 2nd Additional Sessions Judge/Special Judge(POCSO Act), Meerut, Uttar Pradesh in Protection of Children from Sexual Offences Act (POCSO) Case No.270/2016 for the offence punishable under Sections 7 & 8 respectively of the POCSO Act, Sections 354, 354Kha, 323 and 504 respectively of the Indian Penal Code and Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. At the end of the trial, the appellant stood convicted.

6. He was sentenced to undergo one year rigorous imprisonment with fine of Rs.3000/- for the offence punishable under Section 354

IPC for the offence under Sections 7 and 8 respectively of the POCSO, he came to be sentenced to undergo 4 years of RI with fine of Rs.4,000/- and for the offence under the SC/AT Atrocities Act, he came to be sentenced to undergo 4 years of RI with fine of Rs.5,000/-. The Trial Court ordered that all the sentences shall run concurrently.

7. Being dissatisfied with the Judgment and order of conviction passed by the Trial Court, the appellant went in appeal before the High Court. His Criminal Appeal No.8689/2024 is awaiting final hearing. In the said appeal, the appellant preferred an application under Section 389 of the Code seeking suspension of the substantive order of sentence passed by the Trial Court.

8. The High Court declined to suspend the substantive order of sentence observing as under:-

> *"21. Having heard the learned counsel for applicant/appellant, the learned A.G.A. for State-opposite party-1, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant/appellant, accusation made, this court finds that the objections raised by the learned AGA in opposition to this application for suspension of sentence could not be dislodged by the learned counsel for applicant/appellant with reference to the record at this stage, therefore, irrespective of the varied submissions urged by the learned counsel for applicant/appellant in support of this application for suspension of sentence and also considering the fact that the applicant/appellant has been held to be guilty of committing the offence which is not only immoral but also heinous, therefore, this Court does not find any good or sufficient ground so as to enlarge the applicant/appellant on bail during the pendency of present* appeal."

9. In such circumstances, referred to above, the appellant is here before this Court with the present petition.

10. There are two types of sentence that the Trial Court can impose depending on the nature of the offence. Some orders of

sentence are for a fixed term, unlike the order of sentence of life imprisonment.

11. The case in hand is one of a fixed term of sentence. The maximum punishment that has been imposed is 4 years.

12. Way back in 1999, this Court in "*Bhagwan Rama Shinde Gosai and Others v. State of Gujarat*" reported in (1999) 4 SCC 421 stated that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence should be considered by the Appellate Court liberally unless there are exceptional circumstances.

13. Of course, if there is any statutory restriction against suspension of sentence, it is a different matter.

14. Similarly, when the sentence is life imprisonment, the consideration for suspension of sentence could be of a different approach.

15. But if for any reason the sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases.

16. This Court said in so many words that otherwise the very valuable right of the appellant would be an exercise in futility by afflux of time.

17. When the Appellate Court finds that due to practical reasons, such appeals cannot be disposed of expeditiously, the Appellate Court must show special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. At the same time, the appellate courts can impose similar

conditions when appeal is granted.

18. In "Omprakash Sahni vs. Jai Shankar Chaudhary and Anr. (2023) 6 SCC 123, this Court while considering the scope of 389 CrPC in cases of life imprisonment held as under:-

> ***30. In Kishori Lal v. Rupa [Kishori Lal v. Rupa, (2004) 7 SCC 638 : 2004 SCC (Cri) 2021], this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows : (SCC pp. 639-40, paras 4-6)***
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> > ***"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.***
> >
> > ***5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.***
> >
> > ***6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view."***

31. In Vijay Kumar v. Narendra [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366 : 2003 SCC (Cri) 1197] , it was held by this Court that in cases involving conviction under Section 302IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195], it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

32. The aforesaid view is reiterated by this Court in Vasant Tukaram Pawar v. State of Maharashtra [Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281 : 2005 SCC (Cri) 1052] and Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160 : (2008) 1 SCC (Cri) 644].

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

19. It is unfortunate that the High Court while passing the impugned order failed to take into consideration the well-settled principles of law governing the plea of suspension of sentence on fixed term is concerned. What the High Court did was to reiterate the entire case of the prosecution and the oral evidence which has

come on record.

20. That is not the correct approach.

21. The High Court should have been mindful of the fact that the appeal is of the year 2024. Appeal of 2024 is not likely to be taken up in near future. Ultimately, if 4 years are to elapse in jail the same would render the appeal infructuous and that would be travesty of justice.

22. In such circumstances, referred to above, we set aside the impugned order and remand the matter to the High Court for fresh consideration of the plea of the appellant – herein for suspension of the substantive order of sentence keeping in mind the principles of law as explained by us aforesaid. The High Court shall keep in mind that the sentence is for a fixed term, i.e. 4 years and it is only if there are any compelling circumstances on record to indicate that the release of the appellant would not be in public interest that the Court may order accordingly.

23. We are once again constrained to observe that such errors creep in at the level of High Court and only because the well-settled principles of law on the subject are not applied correctly. It is very important to first look into the subject-matter. Thereafter the court should look into the issue involved. In the last the court should look into the plea of the litigant and then proceed to apply the correct principles of law.

24. With the aforesaid, the Appeal stands disposed of.

25. The High Court shall re-hear the application filed by the appellant – herein afresh at the earliest and pass an appropriate order within 15 days from today.

26. Pending applications, if any, also stand disposed of.

……J
(J.B. PARDIWALA)

……J
(R. MAHADEVAN)

NEW DELHI
6TH AUGUST, 2025.