

Afjaal And Another vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68810

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 14043 of 2025

Applicant :- Afjaal And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sumit Goyal

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Learned counsel for the applicants is permitted to amend the prayer, during the course of the day.
2. Heard Sri Sumit Goyal, learned counsel for the applicants, Sri Sukrampal Tomar, learned counsel for opposite party no.2 and Sri Manish Goyal, learned Additional Advocate General assisted by Sri Pankaj Saxena and Sri Arvind Kumar, learned counsel for the State.
3. The present application has been filed to quash the impugned order dated 19.03.2025 passed by learned Special Judge (POCSO Act)/Additional District and Session Judge, Room No.15, Saharanpur, arising out of case crime no.89 of 2023, under Sections-376, 506 IPC and Section 3/4 POCSO Act, Police Station-Mirzapur, District-Saharanpur.
4. Contention of learned counsel for the applicants is that impugned FIR has been lodged after almost one and a half year from the date of incident and there is no explanation for lodging this delayed FIR. It is further submitted that as per the ossification test conducted on 21.06.2023, age of victim is about 18 years, therefore, there is no evidence that on the date of incident the victim was

minor, therefore, provision of POCSO Act has been erroneously invoked against the applicants. It is lastly submitted that proceeding in question has been initiated against the applicants malafidely. In support of his contention, learned counsel for the applicants has relied upon the judgement of Apex Court in P. Yuvaprakash Vs. State Rep. By Inspector of Police, Criminal Appeal No(s). 1898 of 2023, wherein the Apex Court observed that for invoking the provision of POCSO Act, age of victim should be below 18 years.

5. Per contra, learned Additional Advocate General has submitted that the applicants have earlier approached this court challenging the chargesheet and consequential proceeding through Application u/s 482 No.35621 of 2023 which was dismissed on 27.04.2024 with the observation that on the basis of material available on record, cognizable offence is made out against the applicants and defence being disputed question of fact cannot be considered at this stage but this order was not disclosed by the applicants in his petition. This order was also challenged by the applicant before the Apex Court in SLP Criminal No.8761 of 2024 which was also dismissed on 26.07.2024 permitting the applicants to file discharge before the court below. Therefore, the argument of the applicants that proceeding is absolutely erroneous cannot be permitted to raise, at this stage because all these arguments were dealt with during earlier round of litigation for the quashing of proceeding and the prayer for the same has already been dismissed by this court in Application u/s 482 No.35621 of 2023.

6. Learned counsel for opposite party no.2 has also adopted the argument of learned Additional Advocate General and submitted that there is no illegality in framing of charge.

7. After hearing the submission of learned counsel for the parties and on perusal of record, it is not in dispute that the applicants have challenged the chargesheet before this court through Application u/s 482 No.35621 of 2023 which was dismissed, considering in detail the entire arguments of the applicant and court also made observations that on the basis of material available on record, prima facie case is made out against the applicants. Though, this order was challenged before the Apex Court but same was dismissed leaving it open to the applicants to file discharge application before the court below. From the perusal of the statements of victim girl recorded u/s 161 Cr.P. and 164 Cr.P.C., there is specific allegation of committing rape upon her by the applicants and in the FIR, there is proper explanation of delay for lodging the FIR after one and a half year. Therefore, contention of learned counsel for the applicant that FIR was lodged after delay of one and a half year without any explanation is absolutely misconceived. Even otherwise, these defence cannot be considered at the time of framing of charge and court has to consider the evidence available on record which was submitted by the police at the time of filing the chargesheet.

8. The Apex Court in the case of Bharat Parikh Vs. CBI reported in 2008 (10) SCC 109 observed that at the stage of framing charge, roving and fishing inquiry is not permissible and mini trial cannot be conducted at such stage. At the stage of framing charge, submission on behalf of the accused have to be confined to the material produced by the investigating agency. Paragraph no.19 of the aforesaid judgement is being quoted as under:

"19.As observed in Debendra Nath Padhi case[(2005) 1 SCC 568 : 2005 SCC (Cri) 415] at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure."

9. Similarly, Apex Court in the case of Mauvin Godinho Vs. State of Goa reported in 2018 (3) SCC 358, the Apex Court observed that at the time of framing charge, court should apply prima facie standard on the basis of material available on record. However, at this stage, there cannot be a roving inquiry into the progress of the matter and weigh the evidence like conducting a trial. Paragraph no.12 of the aforesaid judgement is being quoted as under:

?12.At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.?

10. In the present case on perusal of the FIR as well as the statements of victim recorded u/s 161 Cr.P.C. and 164 Cr.P.C., there are specific allegations against the applicants for committing rape and threatening her and it is also not in dispute that the age of the victim on 21.06.2023 was about 18 years. Therefore, on the date of incident i.e. between 16.01.2022 to 17.01.2022, she was minor, therefore, provision of POCSO Act has been rightly invoked.

11. In view of the above, this court does not find any illegality in the impugned order.

12. Accordingly, present application is rejected.

Order Date :- 1.5.2025 S.Chaurasia