

Devendra vs State Of U.P. And 3 Others on 3 March, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:31470

Court No. - 71

Case :- CRIMINAL APPEAL No. - 11480 of 2024

Appellant :- Devendra

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

Counsel for Appellant :- Akhilesh Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Rajeev Misra,J.

(Ref:-Order on the Memo of Appeal)-

1. Heard Mr. Arvind Kumar Srivastava, Advocate, holding brief of Mr. Akhilesh Kumar Yadav, the learned counsel for appellant and the learned A.G.A. for State.
2. Vide order dated 22.11.2024, the appeal was admitted, notice was issued to opposite party-4 and the lower Court record was summoned.
3. Office has submitted a report dated 18.01.2025 stating therein that trial Court record has been received.

4. Notice issued to opposite party-2 has been served through secondary person. However, inspite of service of notice, no one has appeared on behalf of first informant opposite party-2 to oppose this appeal.

5. List for hearing in due course.

Ref: Order on the Application for Suspension of Sentence

1. Heard Mr. Arvind Kumar Srivastava, Advocate, holding brief of Mr. Akhilesh Kumar Yadav, the learned counsel for applicant/appellant and the learned A.G.A. for State.

2. Perused the record.

3. Feeling aggrieved by the impugned judgement and order dated 23.10.2024, passed by Additional Sessions Judge/Special Judge, POCSO Act, District Bijnor in Sessions Case No. 928 of 2022 (State of U.P. Vs. Devendra), arising out of Case Crime No. 140 of 2022 under Sections 452, 354, 504, 506 IPC and Section 8 of Protection of Children From Sexual Offences Act, 2012 Police Station- Rehad, District- Bijnor.

4. By impugned judgment and order dated applicant/appellant has been convicted under Section 8 of Protection of Children From Sexual Offences Act, 2012 and consequently, sentenced to four years rigorous imprisonment along with fine of Rs. 50,000/- and in case of default, applicant/appellant is to undergo six months additional simple imprisonment, under Section 354 IPC and consequently, sentenced to four years rigorous imprisonment along with fine of Rs.10,000/- and in case of default, applicant/appellant is to undergo three months additional simple imprisonment, under Section 452 IPC and consequently, sentenced to four years rigorous imprisonment along with fine of Rs.10,000/- and in case of default, applicant/appellant is to undergo three months additional simple imprisonment, under Section 506 IPC and consequently, sentenced to three years simple imprisonment along with fine of Rs. 10,000/- and in case of default, applicant/appellant is to undergo three months additional simple imprisonment, under Section 504 IPC and consequently, sentenced to six months simple imprisonment. Impugned judgement further records that all the judgements shall run concurrently.

5. In view of aforesaid judgement and order, applicant/appellant was taken into custody. Accordingly, applicant/appellant has filed aforesaid application for suspension of sentence, seeking his enlargement on bail during the pendency of present appeal.

6. Learned counsel for applicant/appellant contends that even though the applicant/appellant is a convicted accused, however in view of the peculiar facts and circumstances of the case applicant/appellant is liable to be enlarged on bail. Referring the impugned judgment and order, the learned counsel for applicant/appellant contends that applicant/appellant has been convicted and sentenced under Section 8 of Protection of Children From Sexual Offences Act, 2012 and not under Section 3/4 POCSO Act. However, with regard to the material on record, it is thus urged by the learned counsel for applicant/appellant that even offence under Section 8 of Protection of Children

From Sexual Offences Act, 2012 is not made out against applicant/appellant. He therefore, submits that the findings returned by Court below to the contrary is not only illegal but also perverse. The prosecution has failed to prove the very story which is said to be proved against applicant/appellant. Though, witnesses adduced on behalf of prosecution inasmuch as the criminality alleged to have been committed by applicant/appellant have not been consistent. As such, no such cogent evidence has emerged on record on the basis of which prima facie it cannot be concluded that applicant/appellant has committing the crime in question. No injury has been sustained by the prosecutrix either. Apart from above, referring to the judgement of Supreme Court in Atul @ Ashutosh Vs. State of M.P., (2024) 3 SCC 663, it is urged by the learned counsel for applicant/appellant that Apex Court has itself observed that where definite sentence, punishment has been awarded by Court below against accused appellant, the High Court must enlarge such an accused on bail. According to the learned counsel for applicant/appellant, in view of heavy pendency of appeals before this Court, coupled with the fact that there is acute shortage of Hon'ble Judges in High Court, there is no likelihood of the present appeal being heard in near future.

7. Even otherwise, applicant/appellant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 23.10.2024. As such, he has undergone more than four months of incarceration. Apart from above, the conclusion drawn by Court below is not only illegal but also perverse. On account of heavy pendency of appeals before this Court, coupled with the fact that there is acute shortage of Hon'ble Judges in High Court, there is no likelihood of the present appeal being heard in near future. It is thus urged by the learned counsel for applicant/appellant that applicant/appellant is liable to be enlarged on bail. In case the applicant/appellant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the hearing of appeal.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant/appellant is a named as well as convicted accused, therefore he does not deserve any indulgence by this Court. According to the learned A.G.A. interest of justice shall better be served in case the appeal itself is heard on merits by fixing a short date instead of enlarging the applicant/appellant on bail. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant/appellant in support of the prayer for bail, with reference to the record at this stage.

9. Having heard the learned counsel for applicant/appellant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant/appellant, accusation made coupled with the fact that the Apex Court in the case of Atul @ Ashutosh (Supra) has observed that where accused applicant has been awarded definite sentence of punishment and there are no chances of the appeal being heard in near future, then in such a circumstance the accused-applicant should be enlarged on bail during the pendency of appeal, no exception can be carved out in the case of present applicant/appellant, in view of heavy pendency of appeals, there is no likelihood of the present appeal being heard in near future, the period of incarceration undergone, the clean antecedents of applicant/appellant, therefore irrespective of the objections raised by the learned A.G.A. to the present application for bail but without making any comment on the merits of the case, applicant/appellant has made out a case for bail.

10. Accordingly, the application for suspension of sentence is Allowed.

11. Let the applicant/appellant- Devendra be released on bail in aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned.

12. However, the amount of the fine awarded against applicant/appellant by Court below shall be deposited by applicant/appellant with the court below, within a period of one month from today, failing which the bail granted to applicant/appellant shall stand cancelled and he shall be taken into custody to serve out the sentence.

Order Date :- 3.3.2025 Imtiyaz