2025 INSC 519

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2101 OF 2025
(Arising out of SLP(Crl) No.18017 of 2024)

LILABEN … APPELLANT(S)

Versus

STATE OF GUJARAT & ANR. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

Leave Granted

2. This appeal is at the instance of the mother of a minor, who was a victim of sexual assault in connection with which a First Information Report, bearing particulars - No.11215003220383, PS Anklav, District Anand, under

Sections 363, 366 of the Indian Penal Code, 1860 and Section 18 of the Protection of Children from Sexual Offences Act, 2012[1], was registered. After investigation, the accused person, who is Respondent No.2 before this Court, was convicted by the Trial Court[2]. The sentence handed down to him was as under :

> "In the proceedings of Special POCSO case No.66/2022, the Accused Jigresh Kumar alias Jigo Rajubhai Padhiyar, Aged 23 years, Occupation Labour, Residing at Asodar, Udu Faliyu, Taluka Anlav, District Anand is held liable for the guilty of offences punishable under Sections 363, 366(A), 376(3) of the IPC and Section 6 of the POCSO Act in connection with Crime Register No.11215003220383/22, dated 4.8.22 registered with Anklav Police Station under Section 235(1) of the Code of Criminal Procedure.
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> It is hereby ordered that accused Jigresh Kumar alias Jigo Rajubhai Padhiyar shall suffer rigorous imprisonment for the term of three years and fine of Rs.1,000 (Rupees One Thousand only) for the offence under Section 363 of the I.P. Code under Section 235(2) of the Criminal Procedure Code and in case of failure to pay amount of fine, accuse shall suffer additional simple imprisonment of one month.
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> It is hereby ordered that accused Jigresh Kumar alias Jigo Rajubhai Padhiyar shall suffer rigorous imprisonment for the term of five years and fine of Rs.2,000 (Rupees Two Thousand only) for the offence under 366(A) of the I.P. Code under Section 235(2) of the Criminal Procedure Code and in case of failure to pay amount of fine, accuse shall suffer additional simple imprisonment for two months.
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> It is hereby ordered accused Jigresh Kumar alias Jigo Rajubhai Padhiyar shall suffer rigorous imprisonment

1 'POCSO Act'
2 Special POCSO Judge and Additional Sessions Judge, Anand at Anand in Sp. POCSO Case No. 66 of 2022

> for the term of 20 years (twenty years) and fine of Rs.5,000 (Rupees Five Thousand only) for the offence under Section 6 of the POCSO Act and in case of failure to pay amount of fine, accused shall suffer additional simple imprisonment for three months.
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> The accused Jigresh Kumar alias Jigo Rajubhai Padhiyar is hereby ordered to suffer imprisonment concurrently and imprisonment suffered during the trial as Kachcha prisoner is ordered to be set off. ....."

3. He approached the High Court seeking suspension of sentence.[3] The Learned Division Bench observed that the age of the victim is in doubt. The records of the Panchayat and the Birth Certificate were produced before the Trial Court; however, the person who produced them, i.e., PW-7, had no personal knowledge thereof, rendering the entry in the register suspect without proof of the source of such information. The sentence was, therefore, suspended pending the outcome of the criminal appeal. He was directed to be released on bail on furnishing bond of Rs. 10,000/- with one surety thereto subject to the satisfaction of the Trial Court and on the condition that he shall not leave India without permission of the High Court; that he shall not enter Village Asodar, Taluka Anklav, District Anand, for a period of two years, and that he shall not change his address. In case he does, it was directed that both the concerned police station and the High Court were to be informed.

3 Criminal Misc Application (for Suspension of Sentence) No. 1 of 2024, in R/ Criminal Appeal No. 1434 of 2024.

4. Aggrieved by the suspension of sentence awarded to Respondent No.2, this appeal has been preferred. The grounds urged are that the facts considered by the High Court that the victim had run away with Respondent No.2 and hence commenced a physical relationship between the two is contrary to the record and the findings of the Trial Court; instead, it is submitted that the first time they met was in 2019 when the victim was only eleven years of age in 2019, and he has been harassing her since then. Further, it has been urged that the finding regarding the proof of age of the victim being suspect, is contrary to law. In this regard, reference is made to Sections 34 of the POCSO Act and 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Suspension of Sentence, it was then submitted, is the exception and not the rule. For this proposition, reliance is placed on ***Shivani Tyagi v. State of U.P.***[4].

5. We have heard Ms. Shahrukh Alam and Ms. Swati Ghidiyal for the appellant and the State, and Mr. Varinder Kumar Sharma for Respondent No.2.

6. Although various arguments stand advanced, in particular, the different takes on facts by the High Court - our analysis is only limited to the correctness and legality of the

4 2024 SCC OnLine SC 842

exercise of power under Section 389, Code of Criminal Procedure, 1973[5]. The Section reads as under :

> "**389. Suspension of sentence pending the appeal; release of appellant on bail.—**(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:
>
> [Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:
>
> Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]
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> (2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.
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> (3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—
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> (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
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> (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so

5 'CrPC'

long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

7. When an accused person applies to the Appellate Court for suspension of sentence and succeeds in getting the Court to make an order in his favour, what gets stayed is only the execution of the sentence and nothing more. The sentence remains and is only, not acted upon [See: ***K. Prabhakaran v. P. Jayarajan***[6]]. In doing so, there has to be a recording of reasons, which, of course, can only be possible after due consideration [See: ***State of Haryana v. Hasmat***[7]; ***Vijay Kumar v. Narendra***[8] ***and Ramji Prasad v. Rattan Kumar Jaiswal***[9]]. The rationale behind such power is appropriately captured in the words of Bhagwati J., (as his Lordship then was) in the case of ***Kashmira Singh v. State of Punjab***[10]. The observations (reproduced below) were made in the context of the sentence of life imprisonment in connection with offences under Section 302 IPC, however, the same is relevant here as well, since the sentence imposed is 20 years, i.e., greater than life

6 (2005) 1 SCC 754
7 (2004) 6 SCC 175
8 (2002) 9 SCC 364
9 (2002) 9 SCC 366
10 (1977) 4 SCC 291

imprisonment, which is, as unless otherwise specified, for a period of 14 years. It was said -

> "**2.** The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Penal Code, 1860. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore,

> absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."
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> (Emphasis Supplied)

In the same vein, it would be useful to note the contours of this power as discussed in the recent case of ***Afjal Ansari v. State of U.P.***[11]**.** Surya Kant, J., speaking for the majority, held :

> "**19.** This Court has on several occasions opined that there is no reason to interpret Section 389(1) CrPC in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences. Undoubtedly, *Ravikant S. Patil* v. *Sarvabhouma S. Bagali* [*Ravikant S. Patil* v. *Sarvabhouma S. Bagali*, (2007) 1 SCC 673, para 15 : (2007) 1 SCC (Cri) 417], holds that an order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case. However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation. Having applied the specific criteria outlined hereinabove to the present factual matrix, it is our considered view that the appellant's case warrants an order of stay on his award of conviction, though partially.
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> x x x
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> **25.** Having said so, we hasten to hold that societal interest is an equally important factor which ought to be zealously protected and preserved by the courts. The literal construction of a provision such as Section 389(1)CrPC may be beneficial to a convict but not at the cost of legitimate public aspirations. It would thus be appropriate for the courts to balance the interests of protecting the integrity of the electoral process on one hand, while also ensuring that constituents

11 **(**2024) 2 SCC 187

> are not bereft of their right to be represented, merely consequent to a threshold opinion, which is open to further judicial scrutiny."

8. In the present facts, Respondent No.2 has been convicted by the Trial Court. In its conclusion necessarily then, the victim had to be a minor. Whether or not the finding regarding the age of the victim is correct or not, or the manner in which was sought to be proved before the Trial Court, was in accordance with the law or not, is a question that is open for consideration in the jurisdiction under Section 374 CrPC as may be provided therein, and not under Section 389 CrPC. Casting doubt upon a finding returned by the Court below, when the same isn't within immediate purview, cannot be justified.

9. Till and such time, the finding of the Trial Court is examined independently by the High Court, and proven to be incorrect, it has to be taken as the position in law. So, at the present moment, it is proven that Respondent No.2 has committed the offences for which he stands convicted, subject to confirmation or setting aside by the High Court in the pending appeal. Considering this, and also the nature of offence on one hand, and his age on the other, in the attending facts and circumstances, we are of the considered view, that the High Court ought not to have suspended the sentence as was imposed by the Trial Court.

10. The judicious use of this power being the path to be adopted by the Courts, as held in ***Angana v. State of Rajasthan***[12], and also the said exercise not being at the cost of 'legitimate public aspirations' which here would be, all things considered, Respondent No.2 be confined in jail, both do not justify the conclusion arrived at by the High Court. Respondent No.2 is accordingly directed to surrender before the competent authority forthwith. It is clarified that if the appeal pending before the High Court is not heard in eighteen months, he shall be at liberty to approach the High Court seeking regular bail.

11. With the aforementioned observations, which are limited to the examination of the correctness of the order of suspension of sentence, the appeal is allowed. Pending Applications, if any, shall stand closed.

…….....……J.
(SANJAY KAROL)

…….....……J.
(PRASHANT KUMAR MISHRA)

New Delhi;
21st April, 2025.

12 (2009) 3 SCC 767