Redacted by NyayVidhan (sexual-offence case): the appellant's name (shown as an initial on nyayvidhan.in), the High Court's bench seat, the trial court's place, the police stations, the name of the person whose house is named as the place of the offence, the date of the incident, the girl's date of birth and the trial court's judgment date are withheld. Text otherwise as issued by the Court.

2025 INSC 935

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO.69 OF 2025)

…APPELLANT (S)

VERSUS

STATE OF RAJASTHAN
AND ANOTHER …RESPONDENT(S)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. We have heard Mr. K.L. Janjani, learned counsel for the appellant, Ms. Sansriti Pathak, learned Additional Advocate General for the first Respondent - State of Rajasthan, and Mr. Namit Saxena, learned counsel for Respondent No.2.

3. The present Appeal by the father of the prosecutrix challenges the order of the High Court of Judicature for Rajasthan, Bench at dated 03.09.2024 in S.B. Criminal Misc. Suspension of

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BORRA LAKSHMI KALLI
Date: 2025.08.06
15:56:37 IST
Reason:

Sentence Application (Appeal) No. 852 of 2024 in S.B. Criminal Appeal No. 397 of 2024. By the said order, the sentence imposed on Respondent No.2 herein was suspended till the final disposal of the appeal and Respondent No.2 was directed to be released on bail, subject to certain conditions imposed on him by Special Judge (POCSO) (Rajasthan) by her judgment and order dated .

4. Respondent No.2 has been found guilty for the offences punishable under Section 3/4 (2) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') as well as under Section 376(3) of the Indian Penal Code, 1860. Respondent No.2 was sentenced under Section 3/4 (2) of POCSO Act and no sentence was imposed under Section 376(3) in view of Section 42 of POCSO Act. Insofar as Section 3/4 (2) of POCSO Act was concerned, Respondent No.2 was sentenced to undergo 20 years rigorous imprisonment and was ordered to pay a fine of Rs. 50,000/-. In default of payment of fine, Respondent No.2 was directed to undergo additional 2 years rigorous imprisonment. Respondent No.2 had undergone

imprisonment for a period of 1 year and 3 months after which his sentence was suspended by the High Court.

5. The High Court while suspending the sentence, after setting out the contention of the respective parties, has recorded only the following reasons before enlarging Respondent No.2 on bail:

> "5. Upon a consideration of the arguments advanced on behalf of the appellant as well as learned State Counsel and counsel for the complainant and having regard to the facts and circumstances as available on the record and especially the fact that no sign of sexual assault was found by the medical expert on the body of the prosecutrix; no FSL as well as DNA report is available on record; despite the availability of washrooms in the house, it is little difficult to digest that prosecutrix will go out for toilet; there is no prospect of being heard and disposal of this appeal in near future, this Court is of the opinion that the appellant has available to him strong grounds to assail the impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentences awarded to the applicant-appellant during pendency of the instant appeal."

6. The Trial Court, while convicting Respondent No.2, relied on the evidence of prosecutrix PW-3 who had deposed to the following effect: - On , at 4 PM, when she had gone to the field to defecate, Respondent No.2 came from behind and at gun point after closing her mouth took her to 's house near the dry tank located in the field. Thereafter, the prosecutrix deposed that Respondent No.2 committed rape on her; that she came back and narrated the incident to her mother and other family members; that her father had gone out

at that time and he came little while thereafter; that she went with her father to the police station where her father lodged the First Information Report. She also deposed that she was medically examined, and she had given her undergarments and Pajama to the Doctor. The statement under Section 164 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C') was recorded earlier where she maintained her case against Respondent No.2. She further deposed that Respondent No.2 had forcibly removed her clothes and laid her on the mattress on the cot on the ground floor of the house.

7. The Trial Court found that no material contradictions had emerged in the evidence. The Trial Court further relied on the evidence of the mother of the prosecutrix-PW-2 and father PW-4. Dealing with the age of the victim, the Trial Court, by relying on the admission application filled for admission to the school (Exhibit P-1) the original school record register (Exhibit P-2) as well as the birth certificate (Exhibit P-9), came to the conclusion that the prosecutrix was a child under Section 2(d) of POCSO Act, since the date of birth was . The date of incident being , the victim was 14 years and 3 months of age. According to the Trial Court, the

documentary evidence fulfilled the parameters set out under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

8. Dealing with the medical evidence, the Trial Court stated that the prosecutrix was medically examined and the evidence was to the effect that no external visible injury was found on the body and genitals of the victim and her hymen was in an old torn healed state. The medical evidence was to the effect that no conclusive opinion about the crime could be given and FSL report was kept awaited for further opinion.

9. The Trial Court also noticed that the prosecution did not furnish the FSL and DNA report till the Trial was over. However, the Court held that the case was not adversely affected, since DNA report could only be corroborative in nature. The Trial Court raised the presumption under Section 29 and 30 of POCSO Act to presume that unless the contrary was proved, it was the accused who had committed the offence.

10. One would have expected the High Court hearing an application under Section 389 of Cr.P.C. for suspension of sentence to examine

whether *prima facie* there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction. In ***Omprakash Sahni*** v. ***Jai Shankar Chaudhary and Another***[1], this Court had the following to say on the scope of Section 389 of the Cr.P.C.

> **"23.** The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.
>
> **24.** From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.
>
> **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

[1] (2023) 6 SCC 123

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."

11. The State has also filed an affidavit before us setting out the criminal antecedents of Respondent No.2, including details about the cases in which he has been acquitted. Out of the 11 cases mentioned in the Chart, 5 have ended in acquittal and 6 are pending. The chart is set out hereinbelow: -

S.N.	Case Nos. along with Date	Challan No. along with Date	Police Station	Any other particular
1.	FIR No. 279/2010 dated 06.12.2010 under Sections 3/25, Arms Act	Challan No. 176/10 dated 23.12.2010		
2.	FIR No. 332/2010 dated 05.08.2010 under Sections 341, 323, 325 IPC	Challan No. 62/10 dated 30.08.2010		
3.	FIR No. 47/2011 dated 05.04.2011 under Sections 457 and 380 IPC	Challan No.64/12 dated 28.06.2012		
4.	FIR No.128/2011 dated 25.06.2011 under Sections 457 and 380 IPC	Challan No. 91/12 dated 20.06.2012		Judgement on 18.03.2013 By ACJM Acquitted:
5.	FIR No.105/2012 dated 24.04.2012 under Sections 3 and 25 Arms Act	Challan No. 100/12 dated 16.07.2015		Judgment on 11.02.2021 Acquitted

6.	FIR No. 82/2012 dated 01.04.2012 under Sections 394, 120B IPC and 3 and 25 of Arms Act	Challan No. 96/12 dated 12.07.2012		Judgement on 25.01.2014 by ACJM, Acquitted: benefit of doubt given
7.	FIR No.166/2015 dated 03.09.2015 under Sections 323, 341 IPC	Challan No. 116/15 dated 16.10.2015		Acquitted on 08.02.2020 by ACJM
8.	FIR No. 59/2017 dated 25.04.2017 under Sections 323, 341 and 34 IPC	Challan No. 44/17 dated 04.05.2017		Acquitted on 08.02.2020 by ACJM, Lok Adalat
9.	FIR No. 43/2019 dated 27.01.2019 under Sections 3 and 25 Arms Act	Challan No. 33/19 dated 25.03.2019		
10.	FIR No.318/20 dated 13.12.2020 under Sections 379, and 411 IPC	Challan No. 40/21 dated 10.03.2021		
11.	FIR No. 147/2021 dated 08.07.2021 under Sections 147, 323, 341 IPC	Challan No. 121/21 dated 30.09.2021		

12. Taking into account the fact that the High Court has not adverted to any of the relevant factors for considering the case for suspension under Section 389 and keeping in mind the antecedents, we are of the opinion that High Court was not justified in suspending the sentence.

13. In the affidavit filed before us, Respondent No.2 has contended that there is no allegation of post-bail misconduct or breach of conditions warranting the setting aside of the bail order. The submission is fallacious. There is clear distinction in law between

setting aside of the bail by a higher Court and cancellation of the bail. While cancellation of bail is due to some supervening circumstances like breach of bail condition, setting aside of the bail is concerned not with the breach of condition but with the justifiability and soundness of the order granting bail (See ***Neeru Yadav*** v. ***State of Uttar Pradesh and Another***[2]).

14. It has been further contended that there was lack of corroborative medical and forensic evidence. The State, in its counter affidavit, averred that the FSL/DNA report could not be presented by the prosecution before the conclusion of trial and that the FSL report which has since been received does mention the presence of male DNA/semen of the accused on the private part and underwear of the victim. We are not inclined to comment one way or the other on the merits of the FSL report and we leave it to the prosecution if it so desires to resort to such legally permissible procedure as is available in law to bring the same on record.

15. Independent of the FSL and DNA report and considering the nature of the case and the antecedents of Respondent No.2 and after

[2] (2014) 16 SCC 508

carefully examining the judgment of conviction, we feel that the High Court was not justified in suspending the sentence.

16. The reasoning of the High Court, set out above, falls far short of the parameters required under Section 389 of Cr.P.C. for enlargement of a convict, punished for heinous offence, on bail after suspending the sentence. The finding that no sexual assault was found, without considering the overall nature of the evidence of the case, is completely untenable. According to the evidence of the prosecutrix, Respondent No.2, at gunpoint, closed her mouth and forcibly took her to the house of and committed rape on her. All that the medical evidence said was that no conclusive opinion about the crime could be given since FSL Report was awaited. That does not mean that the ocular evidence could be ignored. As far as non-availability of FSL Report is concerned, the prosecution has explained the situation and the Trial Court has also found that the non-availability of the DNA Report did not adversely affect the case of the prosecution. The reasoning that despite the availability of washrooms in the house it was difficult to believe that the prosecutrix could go out for the toilet, is conjectural in nature.

17. In ***Vijay Kumar*** v. ***Narendra and Others***[3] this Court observed as follows:

> "10. On perusal of the record and on consideration of the submissions made by the learned counsel appearing for the parties, we are of the view that in the context of the facts and circumstances of the case the High Court was in error in passing the order releasing the respondents on bail. The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents. In the above circumstances, it is difficult for us to even surmise the circumstance which prompted the learned Single Judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well settled that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the 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. Our attention has not been drawn to any material which would show that the learned Single Judge took into consideration the relevant factors while passing the bail order. We refrain ourselves from making any observation touching on merits of the case lest it may prejudice any of the parties. Suffice it to state that we do not consider this a fit case for grant of bail to the respondents during pendency of the appeal filed by them."

Though said in the context of Section 302 IPC, it applies with equal force to a case of the present nature under the POCSO Act, also.

18. We make it clear that the observations made herein are only for the purpose of setting aside the order of suspension of sentence.

[3] (2002) 9 SCC 364

19. In view of what has been stated hereinabove, we set aside the order of the High Court dated 03.09.2024 in S.B. Criminal Misc. Suspension of Sentence Application (Appeal) No. 852 of 2024 in S.B. Criminal Appeal No. 397 of 2024. The appeal is allowed. Respondent No.2 is directed to surrender before the Court of Special Judge (POCSO) , (Rajasthan), on or before 30th August 2025, failing which, the State shall take Respondent No.2 into custody.

.....J.
[**B.V. NAGARATHNA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
6th August, 2025