

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI G. NARENDAR
AND
HON'BLE SRI JUSTICE ALOK MAHRA

CRIMINAL APPEAL NO. 173 OF 2025

20TH MARCH, 2025

'P' Appellant

Versus

State of Uttarakhand Respondent

Counsel for the appellant : Mr. Priyanshu Gairola, learned counsel

Counsel for the respondent : Mr. J.S. Virk, learned Deputy Advocate General with Mr. Rakesh Kumar Joshi, learned Brief Holder for the State

The Court made the following:

ORDER: (per Hon'ble The Chief Justice Sri G. Narendar)

The facts of the case are not merely startling but shocking. It is submitted that initially the mother of the alleged victim is said to have lodged an FIR against four boys stating that they had come to her shop in the afternoon and threatened her to come to school premises in the evening, and that in the school premises, she alleges, she was raped, and she has assigned specific role to each of the four boys, where after the victim's family and the families of the four boys are said to have arrived at a settlement, and which settlement has also come on record in the trial. The deed of

settlement is said to have been produced by D.W.1, who is said to have mediated, and in whose house the parties. i.e., the families of the four boys and the family of the alleged victim are said to have met and resolved. Thereafter, it is alleged that when the victim was taken to record her statement under Section 164 Cr.P.C., she has changed her version and told the Magistrate that it was actually the appellant who raped her and, threatened her to name the other four boys, and this is how, she named the four boys in the FIR, and on the advise of the Investigating Officer to tell the truth, she has spoken the truth in the course of recording her statement under Section 164 Cr.P.C. If that was so, the statement could have been recorded by the Investigating Officer herself.

2. Prima facie, the facts would reveal an attempt to shield the guilty and frame an innocent. We think so, as we are constrained to presume so in view of the settlement that is admitted between the alleged victim and the families of the four other boys. If the boys were innocent, and if nothing had happened, the necessity for a settlement was not there.

3. In these circumstances, the Investigating Officer has lodged the final report, and the court has taken it up for trial, and thereafter proceeded to hold the minor as a major, and awarded punishment under Section 3/4 of POCSO Act.

4. It is also submitted that the victim refused to undergo medical test nor even submitted her clothes for forensic test. Despite this glaring lacuna, the trial court has proceeded to hold the appellant guilty and imposed a sentence of 20 years imprisonment under Section 4 of the POCSO Act to a person, who himself was a child on the alleged date of incident.

5. Issue show cause notice to the Investigating Officer S.I. Ms. Bhumika Pandey as to why strictures should not be passed against her.

6. In view of the above facts, issue show cause notice to Mr. Ashwini Gaur, Presiding Officer of Juvenile Court / F.T.C. / Additional Sessions Judge, Special Judge (POCSO), District Udham Singh Nagar as to why strictures should not be passed against him.

7. A copy of this order be also placed before the Administrative Judge, Udham Singh Nagar.

Bail Application (I.A. No. 01 of 2025)

The facts, prima facie, disclose an attempt to frame an innocent. The Court has failed to appreciate, either the refusal of the alleged victim to undergo medical test, nor her refusal to give clothes for forensic test. The perversity in the appreciation of evidence is glaring. P.W.5 in her cross-examination has admitted that the alleged victim made a further statement absolving the appellant of any wrong

doing. Despite these prevarications and the consistent changing of version, the trial court has brushed aside the material which dent the credibility of the victim's version, which in our considered opinion is gross perversity.

In that view of the matter, the appellant has made out a case for suspension of sentence and for grant of bail. Accordingly, the sentence dated 13.02.2025 stands suspended. The application for bail (I.A. No. 01 of 2025) is allowed. The appellant is directed to be enlarged on bail forthwith, if not required in any other case.

List the matter on 17.04.2025.

G. NARENDAR, C.J.

ALOK MAHRA, J.

Dt: 20TH MARCH, 2025
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