

Court No. - 80

Case :- CRIMINAL APPEAL No. - 4281 of 2025

Appellant :- Dhirendra Kumar Alias Dhunkari

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

Counsel for Appellant :- Ajay Raj Yadav, Anand Prakash Yadav, Krishna Yadav

Counsel for Respondent :- G.A.

Hon'ble Rajeev Misra, J.

Order on Memo of Appeal.

1. Heard Mr. Anand Prakash Yadav, the learned counsel for appellant and the learned AGA for State-opposite party-1.
2. Admit.
3. Summon the lower court record.
4. Notice on behalf of State-opposite party-1 has been accepted by the learned AGA.
5. Issue notice to opposite parties- 2 and 3.
6. Notices issued to opposite parties-2 and 3 shall be made returnable on 09.09.2025. Notices shall further indicate that matter shall re-appear before Court as fresh on 09.09.2025.
7. Notice in respect of opposite party-4 was served in the Office of opposite party-4 before filing this appeal. However, in spite of service of notice no one has put in appearance on his behalf to oppose this appeal even in revised call.
8. Put up this appeal for orders as fresh on 09.09.2025.

Order on Application for suspension of sentence.

9. Heard Mr. Anand Prakash Yadav, the learned counsel for applicant/appellant and the learned AGA for State-opposite party-1.

10. Perused the record.

11. By means of the impugned judgment and order dated 10.03.2025/11.03.2025, applicant/appellant has been convicted under Section 376 (AB) IPC and Section 6 of POCSO Act but has been sentenced for a maximum period of 20 years rigorous imprisonment along with fine.

12. Since the applicant/appellant has been convicted under POCSO Act also, therefore, no order can be passed by this Court on the application for suspension of sentence filed by applicant/appellant without hearing first informant-opposite party-2.

13. In view of above and also the provisions existing in Section 430 BNSS, the learned AGA is mandatorily required to file objection/counter affidavit to the application for suspension of sentence before any order can be passed on the said application.

14. Notice on behalf of State-opposite party-1 has been accepted by the learned AGA.

15. Notice in respect of opposite party-4 was served in Office of opposite party-4 before filing this appeal. However, in spite of service of notice neither any objection/counter affidavit has been filed by opposite party-4 in opposition to this application for suspension of sentence nor any one has put in appearance on his behalf to oppose this application for suspension of sentence even in revised call.

16. Issue notice to opposite parties- 2 and 3.

17. Notices issued to opposite parties- 2 and 3 shall be made returnable on 09.09.2025. Notices shall further indicate that matter shall re-appear before Court as fresh on 09.09.2025.

18. All the opposite parties may file their respective objections/counter affidavits within four weeks. Learned AGA shall also bring on record the custody certificate of applicant/appellant along with counter affidavit. Applicant/appellant will have two weeks thereafter to file his rejoinder affidavit.

19. Put up this appeal for orders as fresh on **09.09.2025**.

20. By the next date, the learned counsel for applicant/appellant shall file a list of dates, brief synopsis containing the details of prosecution evidence (oral and documentary), material exhibits, defence evidence, points raised before Court below and the findings returned by Court below.

Order Date :- 29.7.2025

R.S. Tiwari