

Court No. - 70

Case :- CRIMINAL APPEAL No. - 4620 of 2025

Appellant :- Abulaash Ansari @ Aasi

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

Counsel for Appellant :- Pulak Ganguly, Ravi Bhushan Singh

Counsel for Respondent :- G.A.

Hon'ble Rajeev Misra, J.

Order on Memo of Appeal.

1. Heard Mr. Ravi Bhushan Singh, the learned counsel for appellant and the learned AGA for State.
2. Admit.
3. Summon the lower court record.
4. Notice on behalf of State-opposite party has been accepted by the learned AGA.
5. Issue notice to opposite parties-2 & 4.
6. Notice issued to opposite parties-2 & 4 shall be made returnable on 24.07.2025. Notice shall further indicate that matter shall re-appear before this Court as fresh on 24.07.2025.
7. Notice in respect of opposite party-3 has been served in the office of opposite party-3. However, in spite of service of notice no one has put in appearance on behalf of opposite party-3 to oppose this appeal even in revised call.
8. Put up this appeal for orders as fresh on 24.07.2025.

Order on Application for suspension of sentence.

9. Heard Mr. Ravi Bhushan Singh, the learned counsel for appellant and the learned AGA for State.
10. Perused the record.
11. By means of the impugned judgment and order, applicant/appellant has been convicted under Section 8 of POCSO Act and therefore sentenced to 4 years simple imprisonment along with fine of Rs.5,000/-, in default, applicant/appellant is to

undergo one month additional simple imprisonment.

12. By virtue of the judgment of the Bombay High Court in **Arjun Kishanrao Malge Vs. State of Maharashtra, 2021 SCC Online Bom 551** and there being no good reason to deffer from the said judgment, the first informant/opposite party-4 is mandatorily required to be heard before passing any order on the application for suspension of sentence/prayer for bail.

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

14. Issue notice to opposite parties-2 & 4.

15. Notice issued to opposite parties-2 & 4 shall be made returnable on 24.07.2025. Notice shall further indicate that matter shall re-appear before this Court as fresh on 24.07.2025.

16. Notice in respect of opposite party-3 has been served in the office of opposite party-3. However, in spite of service of notice neither any counter affidavit has been filed on behalf of opposite party-3 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/prayer for bail even in revised call.

17. In view of above and also the provisions existing in proviso to section 389(1) Cr.P.C./430 BNSS the learned AGA is mandatorily required to file his objections/counter affidavit to the application for suspension of sentence, before any order is passed by this Court on the application for suspension of sentence/prayer for bail.

18. Accordingly the learned AGA representing State-opposite party-1 is directed to file his objections/counter affidavit to the application for suspension of sentence within four weeks along with the counter affidavit the learned AGA shall also bring on record the custody certificate of applicant/appellant. Learned counsel for applicant/appellant will have two weeks thereafter to file his rejoinder affidavit.

19. Opposite parties 2, 3 and 4 may also file their counter affidavit to the application for suspension of sentence within four weeks.

20. Put up for orders as fresh on **24.07.2025**.

21. 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 :- 28.5.2025

R.S. Tiwari