



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 8545 of 2025

Pushpendra Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Rajesh Kumar Nishad
Counsel for Respondent(s)	:	G.A.

Court No. - 80

HON'BLE RAJEEV MISRA, J.

In Ref.: Order on the Memo of Appeal.

1. Heard Mr. Rajesh Kumar Nishad, the learned counsel for appellant and the learned A.G.A.
2. Admit.
3. Summon the lower court record.
4. Notice on behalf State-opposite party-1 has been accepted by the learned A.G.A.
5. List this appeal for hearing in due course.

Ref: Order on the Application for Suspension of Sentence

1. Heard Mr. Rajesh Kumar Nishad, the learned counsel for applicant/appellant and the learned A.G.A. for State.
2. Perused the record.
3. Challenge in this criminal appeal is to the judgement and order dated 22.08.2025 passed by Additional District and Sessions Judge/ Special Judge (DAA), Banda in Sessions Trial No. 174 of 2012 (State of U.P. Vs. Pushpendra) arising out of Case Crime No. 10 of 2012, under Section 366 I.P.C., P.S.-Bisanda, District-Banda.
4. Under the impugned judgement and order passed by court below, applicant/appellant has been convicted under Section 366 IPC and consequently, sentenced to 7 years imprisonment alongwith fine of Rs. 5,000/- and in case of default in payment of fine, applicant/appellant is to

undergo one month additional imprisonment.

5. Learned counsel for applicant/appellant submits that applicant/appellant was enlarged on bail during the pendency of trial. However, subsequent to the impugned judgement and order dated 22.08.2025 passed by court below, applicant/appellant was taken into custody. As such, applicant/appellant is under incarceration since 22.08.2025. Accordingly, applicant/appellant has filed aforementioned application for suspension of sentence/prayer for bail seeking his enlargement on bail during the pendency of present appeal.

6. Mr. Rajesh Kumar Nishad, the learned counsel for applicant/appellant in support of the application for suspension of sentence submits that though applicant/appellant is a named as well as convicted accused and undergoing incarceration, however, irrespective of above and in view of the facts as have now crystallized on record, applicant/appellant is liable to be enlarged on bail during the pendency of present appeal.

7. In furtherance of aforesaid submission, it is then contended by the learned counsel for applicant/appellant that applicant/appellant was enlarged on bail during the pendency of trial. However, there is nothing on record to show that applicant/appellant misused the liberty of bail during the pendency of trial. On the above premise, it is thus urged by the learned counsel for applicant/appellant that applicant/appellant is liable to be enlarged on bail during the pendency of present appeal also.

8. According to the learned counsel for applicant/appellant, sentence awarded to applicant/appellant by court below is a definite sentence punishment inasmuch as the maximum sentence awarded by court below to applicant/appellant is 10 years. However, in view of heavy pendency of criminal appeals before this Court and also an acute shortage of Hon'ble Judges in this Court, there is no likelihood of the present appeal being heard in near future. It is thus urged by the learned counsel for applicant/appellant that in view of aforementioned peculiar and precarious circumstance resulting in uncertainty in the hearing of present appeal, applicant/appellant is liable to be enlarged on bail during the pendency of present appeal.

9. Attention of the Court was then invited to the judgement of Supreme Court in **Atul @ Ashutosh Vs. State of M.P., (2024) 3 SCC 663** wherein the Apex Court has itself observed that where a convict has been awarded

definite sentence punishment and there is no likelihood of the appeal being heard in near future, then in such a circumstance, such a convict should be enlarged on bail during the pendency of appeal by the Court of appeal itself.

10. With reference to record, the learned counsel for applicant/appellant submits that there is no such distinguishing feature on record of present case on the basis of which the ratio laid down by Apex Court in aforementioned judgement could be so distinguished so as to deny bail to applicant/appellant during the pendency of present appeal. It is thus contended by the learned counsel for applicant/appellant that in view of above and aforementioned judgement of Supreme Court, applicant/appellant is liable to be enlarged on bail during the pendency of present appeal.

11. Challenging the veracity of the conviction and sentence awarded to applicant/appellant by court below under the impugned judgement, the learned counsel for applicant/appellant further submits that prosecutrix is major. She is a willing and consenting party. At no point of time, any disclosure was made by the prosecutrix to the police that she has been kidnapped even though the police was present at the time of her travel alongwith accused. On the above premise, the learned counsel for applicant/appellant submits that the conviction and sentence awarded to applicant/appellant by court below is not established from the evidence on record. He thus contends that in view of above, the conviction and sentence awarded to applicant/appellant by court below is against the weight of evidence on record and therefore, liable to be set aside by this court.

12. It is further submitted by the learned counsel for applicant/appellant that Section 366 I.P.C. gets attracted only when the contingencies in the charging section itself are satisfied that the kidnapping is for the purpose of marriage, sexual intercourse or ransom. However, in the present case either of the three contingencies are not satisfied. For ready reference Section 366 I.P.C. is reproduced herein-below:

"Section 366:- Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be

compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

13. Even otherwise, applicant/appellant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant/appellant is in jail since 22.08.2025. As such applicant/appellant has undergone almost one month of incarceration subsequent to the impugned judgement and order passed by court below. Furthermore, applicant/appellant was enlarged on bail during the pendency of trial but there is nothing on record to show that applicant/appellant misused the liberty of bail during the pendency of trial. Apart from above, sentence awarded to applicant/appellant by court below is a definite sentence punishment but there is uncertainty in the hearing of present appeal in near future. Moreover, no such compelling circumstance has emerged on record warranting custodial arrest of applicant/appellant during the pendency of present appeal. Prima-facie the conviction and sentence awarded to applicant/appellant under Section 366 I.P.C. is liable to be set aside. On the above premise, it is thus urged by the learned counsel for applicant/appellant that applicant/appellant is liable to be enlarged on bail during the pendency of present appeal. In case the applicant/appellant is enlarged on bail then in that eventuality applicant/appellant shall not misuse the liberty of bail and shall co-operate in the hearing of present appeal.

14. Per contra, the learned A.G.A. representing State/opposite party-1 has vehemently opposed the prayer for bail. Learned A.G.A submits that since applicant/appellant is a named as well as convicted accused and undergoing incarceration, therefore, no indulgence be granted by this court in favour of applicant/appellant at this stage. Admittedly,

applicant/appellant is guilty of kidnapping the prosecutrix, who was a young and innocent school going girl. He therefore contends that in view of above, criminality committed by applicant/appellant is not private in nature but a crime against society. Offence complained of against applicant/appellant is not only illegal but also immoral. According to the the learned A.G.A., interest of justice shall better be served in case the appeal itself is heard finally on merits by fixing a short date rather than enlarging the applicant/appellant on bail during the pendency of present appeal. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant/appellant in support of the application for suspension of sentence/prayer for bail as noted herein above with reference to the record at this stage.

15. Having heard the learned counsel for applicant/appellant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, the nature and gravity of offence as well as complicity of applicant/appellant and accusation made this court finds that the submissions urged by the learned counsel for applicant/appellant in support of the present application for suspension of sentence/prayer for bail are clearly borne out from the record and furthermore the same could not be dislodged by the learned A.G.A. with reference to the record at this stage. Therefore in view of above and irrespective of the objections raised by the learned A.G.A. in opposition to this application for suspension of sentence/enlargement on bail but without making any comment on the merits of the appeal, this court finds that applicant/appellant has made out a case for bail.

16. In view of the discussion made above, the application for suspension of sentence/grant of bail to applicant/appellant during pendency of present criminal appeal succeeds and is liable to be allowed.

17. It is, accordingly, **allowed**.

18. Let the applicant/appellant-**Pushpendra** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of court concerned.

19. It is however provided that applicant/appellant shall deposit the amount of fine awarded by court below with the court below, if not deposited, within a period of one month from today. In case of default, the bail granted to applicant/appellant under this order shall stand

automatically cancelled and he shall be taken into custody forthwith to serve out the sentence awarded by court below.

(Rajeev Misra,J.)

September 22, 2025
YK