

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI G. NARENDAR
AND

HON'BLE SRI JUSTICE ALOK MAHRA

17TH OCTOBER, 2025

CRIMINAL APPEAL No. 100 OF 2024

with

IA No. 01/2024 (Bail Application)

Rampal.

...Appellant/ Applicant

Versus

State of Uttarakhand.

...Respondent

With

Writ Petition (PIL) No. 114 of 2024

Writ Petition (CRL) No. 658 of 2025

Writ Petition (CRL) No. 659 of 2025

Counsel for the appellant/ : Mr. Priyanshu Gairola, learned counsel.
applicant in CRLA No.
100/2024.

Counsel for the petitioner in : Ms. Manisha Bhandari, petitioner, party-in-
WPPIL No. 114/2024. person with Mr. Shashwat Sidhant and Ms.
Ishita Dhaila, learned counsels.

Counsel for the State of : Sri J.S. Virk, learned Deputy Advocate
Uttarakhand. General with Sri Rakesh Joshi, learned
Brief Holder for the State of Uttarakhand.

Counsel for the complainant in : Sri Siddhartha Bankoti and Ms. Divya Jain,
CRLA No. 100/2024. learned counsel.

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

Heard Mr. Priyanshu Gairola, learned counsel
for the appellant/ applicant in CRLA No. 100/2024, Ms.
Manisha Bhandari, petitioner, party-in-person in WPPIL
No. 114/2024, Mr. J.S. Virk, learned DAG for the State

and Mr. Siddhartha Bankoti & Ms. Divya Jain, learned counsels for the victim.

2. The matter was heard yesterday and the victim was present and fervently pleaded to the Court to positively consider the bail application of the appellant/ applicant. On interaction with the victim, it has come out that the victim is presently working in Dehradun and living alone to financially support herself, and also finance the legal battle on behalf of her husband, who is undergoing incarceration. The victim claims that she is working as a housemaid and earning Rs. 12000/-. She claims that she, and the appellant/ applicant are natives of a far off Village Jakhol in District Uttarkashi. That the trauma she is undergoing, is on account of the application of the law, and she is reduced to a hapless position, on account of the judgment of conviction and sentencing of her husband by the Trial Court.

3. It is the case of the complainant, i.e. the victim's father, that on 01.01.2022, the victim had left the house at 10:00 P.M., stating that she would be going to her grandfather's house and sleep there, but it came to be known in the morning that she never reached her

grandfather's house, and that people submitted that the accused had come to the village with his car, and on that basis it was suspected that the victim had absconded with the appellant/ applicant. The jurisdictional police registered Crime No. 01/2022 and commenced investigation, and the victim was found in the company of the accused, near Arakot Bazar Bridge, and the appellant/ applicant was arrested on 23.01.2022; that the victim was medically examined by the Investigating Officer. The victim's date of birth was affirmed on the basis of birth certificate obtained from the school, and the charge-sheet came to be filed into the Court on 25.02.2022, charging the appellant/ applicant for offences punishable under Sections 363 & 376(2)(n) of the IPC, and Section 5(l) of the POCSO Act.

4. This is not a case of insufficient evidence, but a case of no evidence at all. The dates recorded above would show that the victim was missing between 10.01.2022 and 23.01.2022, and the victim was found in the company of the appellant/ applicant and detained near Arakot Bazar Bridge. A reading of the impugned judgment does not record any proof, having been let in, demonstrating place of residence, be it in the form of a

residential house, or a hotel accommodation. In short, *prima facie*, there appears to be no evidence, as to where the crime was committed. In fact, in paragraph no. 24, the Trial Court, on appreciating the evidence of PW-4, has recorded that PW-4 victim has submitted that she did not meet the appellant/ applicant in the village on 10.01.2022. The Trial Court, in paragraph no. 23, has recorded as under :

“23. After hearing the arguments of the learned advocates of both the parties and taking into due consideration the material available on record, it was found that the focus of the special session trial at hand is the evidence of the victim only. Because the victim has the sole knowledge of the fact of the victim going with the accused or the victim being taken by the accused. Due to which the victim can only tell under what circumstances, how and why the victim went with the accused or under what circumstances, how the accused took her with him and where he kept her during the period from 01.01.2022 to 23.01.2022 and where he committed aggravated penetrative sexual assault/rape with her? Therefore, in the case at hand, the evidence of the victim is being considered first.”

5. The fact remains that the victim turned hostile and denied any wrongdoing on the part of the appellant/ applicant. The Trial Court, in paragraph no. 27, has placed reliance upon the victim's statement, recorded under Section 164 CrPC. On perusal of the exhibits, marked in the course of trial, we find that the statement of the victim, said to be recorded under Section 164 CrPC, is not an exhibit. Though, the victim has been

subjected to detailed cross-examination, nothing incriminating against the appellant has been elicited. Despite the statement, not being marked as an exhibit, and not being made part of the record, we find it strange that the Trial Court has placed reliance on the same. We further find it strange that the Trial Court has found it fit to infer that her statement during the trial and subsequent cross-examination do not contradict the statement recorded under Section 164 CrPC. In fact, the victim has, in her evidence, denied having had physical relationship with the appellant. On the mere fact that the clothes worn by the victim were taken by the Doctor, and she was subjected to medical examination, the Trial Court appears to have presumed commission of an offence under Clause (I) of Section 5 of the POCSO Act. Section 5 of the POCSO Act defines aggravated penetrative sexual assault. Section 5 reads as under :

“5. Aggravated penetrative sexual assault.—
(a) Whoever, being a police officer, commits penetrative sexual assault on a child —
(i) within the limits of the police station or premises at which he is appointed; or
(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
(iii) in the course of his duties or otherwise;
or
(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child. Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

(iv) causes death of the child; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence or during any natural calamity or in similar situations; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,
is said to commit aggravated penetrative sexual assault."

6. The appellant was charged under Section 5 of the POCSO Act, and no definite charge of commission of an offence under Clause (I) of Section 5 was framed. The medical examination of the victim, as recorded by the Trial Court in paragraph no. 18, is as under :

"18. Prosecution witness PW5 Dr. Khushboo Pujari has stated on oath in her examination in chief that on 24.01.2022, I was posted on the said post in District Women's Hospital Uttarkashi. On the said date, lady Con. Deepika brought the victim to me for medical examination. After investigation, the following facts were found by me-

- 1. The victim was fully conscious. There was no sign of injury anywhere on her body or private parts. There were no injury marks.*
- 2. Secondary sexual character was developed.*
- 3. P/V There were no swelling, bruises or cuts on or around the genitals.*
- 4. The hymen was absent.*

In my opinion, there were no signs of forceful sexual assault. During the medical examination of the victim, two vaginal slides were sent to the pathology lab for sperm test. Urine was sent for pregnancy test. The clothes worn by the victim, which were green-red printed kurta, green salwar and green printed panty, were handed over to the lady constable along with the seal. The original copy of MLC register no. 115 is in front of me. The medical report of the victim was prepared by me, which is paper number-4K/32 on the file, on which I identify my writing and signature, on which exhibit P-4 was inserted. The thumb impression of the victim was taken on the medical."

7. The medical expert, apart from recording absence of hymen, has also recorded there was no sign of injury anywhere on her body or private parts, there were no injury marks, that there were no swelling, bruises or cuts, on or around the genitals and the Doctor examining

the victim has opined that there are no signs of any forceful sexual assault. It is pertinent to note that even the Section 164 CrPC statement reflects a narration of the victim that there were physical relations in Himachal Pradesh. Admittedly, the victim and the appellant/ applicant were detained in Uttarakhand. Despite there being no statement that either on the day they were apprehended, or the previous day, there having being any physical intimacy or sexual intercourse between the victim and the appellant/ applicant, yet the clothes, including the inner-garments worn by the victim and the appellant/ applicant were seized. Even more surprising is the finding of the FSL, that has recorded an opinion, that traces of "human semen" are found on the Exhibit-3, i.e. the innerwear of the victim. There is no finding by the FSL that the traces of semen found on Exhibit-3 (FSL Report) is that of the appellant/ applicant.

8. *Prima facie* a bare reading of the impugned judgment would disclose that the Trial Court has not recorded the place of occurrence or commission of crime. The medical examination does not disclose the commission of sexual assault, and even the forensic evidence does not categorically state that the semen

found on the Exhibit-3 is that of the accused. In the absence of critical evidence relating to the place of commission of offence, or any forensic evidence linking the accused to the crime, we find the judgment of conviction more than shocking, and that too a judgment of conviction under Section 5 of the POCSO Act. Section 5 details person or manner of commission of the crime of aggravated penetrative sexual assault. *Prima facie*, the finding of guilt, under Section 5(I), in the absence of any evidence to even demonstrate penetrative sexual assault, is unsustainable.

9. The Hon'ble Supreme Court in the case of the ***In Re: Right to Privacy of Adolescents (Suo Motu Writ Petition (C) No. 3 of 2023***, has held as follows :

“4.1 In paragraphs 24 and 25, this Court highlighted the helpless position in which the victim of the offences under the POCSO Act was placed. Paragraphs 24 and 25 read thus:

“24.

25. Ms Madhavi Divan, the learned amicus curiae, rightly emphasized that no opportunity was made available to a girl of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether

she could have made an informed choice at the age of fourteen or fifteen.”

5. From paragraphs 26 to 36, this Court has elaborately dealt with the failure of the State to perform its obligation to take care of the victim of the offence under the POCSO Act who was only fourteen years old. This Court referred to the constitutional obligation of the State. This Court also held that the existing statutes have enough provisions to address this kind of situation. Though, under the existing law, the State could have taken adequate care of the poor victim, it was not done. Therefore, very elaborate conclusions were recorded by referring to specific provisions of the POCSO Act and the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, ‘the JJ Act’). Ultimately, in paragraphs 37 and 38, this Court has noted the effect of the failure of the State, its machinery as well as the collective failure of society at large. Paragraphs 37 and 38 read thus:

“37. It is the responsibility of the State to take care of helpless victims of such heinous offences. Time and again, we have held that the right to live a dignified life is an integral part of the fundamental right guaranteed under Article 21 of the Constitution of India. Article 21 encompasses the right to lead a healthy life. The minor child, who is the victim of the offences under the POCSO Act, is also deprived of the fundamental right to live a dignified and healthy life. The same is the case of the child born to the victim as a result of the offence. All the provisions of the JJ Act regarding taking care of such children and rehabilitating them are consistent with Article 21 of the Constitution of India. Therefore, immediately after the knowledge of the commission of a heinous offence under the POCSO Act, the State, its agencies and instrumentalities must step in and render all possible aid to the victim children, which will enable them to lead a dignified life. The failure to do so will amount to a violation of the fundamental rights guaranteed to the victim children under Article 21. The police must strictly implement subsection (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.

7. Broadly, there are three issues which we are considering. The first issue is of sentencing the accused. The second issue is about the rehabilitation of

the victim and her child. The third issue is a wider issue about adopting measures for adolescent wellbeing and child protection which goes to the root cause of the problem in our changing society.

13. The final report concludes that in this particular case, it was not the legal crime which caused trauma on the victim, rather it was the legal battle which ensued consequent to the crime that is taking a toll on the victim. In the light of this, the final report recommended that it would be in the best interest of the victim and her child that the family unit stays intact, so that the accused father may be able to participate in the child's upbringing. Further, the report also recommended providing financial, legal and educational support to the victim and her child.

14. Very detailed submissions were made by Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel appointed as amicus curiae. The learned amici have submitted that the sentencing of the accused would have to be examined in light of the findings in the final report, as well as the interaction with the victim, which has conclusively shown that the victim wishes to continue residing with the accused, and has expressed her fervent desire for preservation of his liberty.

15. The learned amici curiae have, therefore, recommended three alternatives in relation to sentencing the accused, which are as under:

*a) Firstly, learned amici submitted that this Court can consider exercising its powers under Article 142 to remit, reduce or suspend the sentence. This court in *Shilpa Sailesh v. Varun Sreenivasan*¹ delineated the contours of the power under the said Article, stating that as long as "complete justice" required by the "cause or matter" is achieved without violating fundamental principles of general or specific public policy, the exercise of the power and discretion under Article 142(1) is valid and as per the Constitution of India. The learned amici submitted that, in the present case, the minimum sentencing provisions under POCSO Act must be considered in the light of the evolving welfare interests of both the victim and her child. The learned amici have reiterated that this Court has exercised this power in similar cases of conviction under the POCSO Act including in *K. Dhandapani v. State*, *Sankar v. State of Tamil Nadu* and *Elumalai v. Inspector of Police*⁴ .*

b) Secondly, the learned amici have submitted that this court can consider remitting the sentence of the accused by the State of West

Bengal under Section 432 CrPC (Section 473 BNSS). However, in the facts of the present case the amicus curiae were of the opinion that this Court ought to exercise its jurisdiction under Article 142 to reduce the sentence of the accused to the sentence already served in order to do complete justice between the parties.

c) Thirdly, the learned amici have submitted that the power of High Court's to quash ongoing criminal proceedings under Section 482 of the CrPC needs to be examined. In Gian Singh v. State of Punjab, this court has cautioned that such power may only be exercised to secure the ends of justice or to prevent abuse of the process of any court. The learned amici have highlighted the different approaches taken by High Courts. The Delhi High Court in Ajay Kumar v. State (NCT of Delhi) and the Madras High Court in Vijayalakshmi v. State have interpreted the statement of objects and reasons of the POCSO Act as not intending to criminalize consensual romantic relationships between adolescents. The Madras High Court, in several cases has adopted a legal interpretation that consensual acts do not fulfil the requirement of 'assault' in the offence of 'penetrative sexual assault.' Similarly, the Calcutta High Court in Ranjit Rajbanshi v. State of West Bengal⁸ has held that the POCSO Act defines "penetration" as a unilateral act by the accused, and therefore in cases of consensual intercourse, the act of penetration may not solely be attributed to the accused. Various High Courts have also considered the impact such prosecution has on the victim and have proceeded to quash the proceeding if pursuing the case would harm the victim. Similarly, the impact of prosecution on the accused has also been considered. In these cases, the learned amici have submitted that it will be pertinent to determine whether the victim has given 'informed consent', which must be done by interacting with the victim, considering compromise memos and examining the statements given by the victim under Sections 161 and 164 of the CrPC. Further, in this light, the learned amici have stressed on the need to identify relevant factors to be considered by High Courts while quashing proceedings under the POCSO Act, in order to curtail inconsistent approaches towards the same.

16. Broadly, the learned amici in relation to sentencing of the accused have submitted that the underlying rationale in the present case should be to prevent the disruption of an existing family unit,

mitigate further hardship to the victim and her child/children, and to balance strict statutory mandates with the principles of proportionality and complete justice. The learned amici contended that while the POCSO Act serves an essential purpose in protecting minors from sexual exploitation, its rigid application in cases of adolescent relationships can lead to outcomes that may not align with the best interests of the prosecutrix and her dependents. In light of this jurisprudence, this Court was requested to consider adopting a similarly nuanced approach in the present case to ensure that justice is served in both letter and spirit.

20. The victim continued to stay with the extended family of the accused, which consists of his parents, uncle, aunts, his five brothers and one sister. In May 2021, the victim gave birth to a daughter. After her delivery, she stayed with her parents for about two weeks, and thereafter, she went back to the house of the accused. When the daughter was seven months old, the police arrested the accused. The Committee noted that the arrest shattered both the victim and her daughter. For days, her daughter cried due to the absence of her father. The Committee recorded that the daughter remains traumatised due to separation anxiety. As can be seen from the report of the Committee, the two year period when the accused was in custody, was the toughest period for the victim. She had to run from pillar to post to defend the accused. She spent large amounts by way of payment of fees to lawyers for his release. The figures of the amount she spent as noted in the final report of the Committee are startling. At different stages, she paid a total amount of Rs. 40,000/- to the advocates. In addition, she claims to have paid a sum of Rs. 10,000/- to an advocate "for winning the case". She spent a sum of Rs. 20,000/- to get copies of the chargesheet and Rs. 7,000/- for getting duplicate copies of the court papers. Shockingly, she paid Rs. 18,000/- to a tout who promised to get bail for her husband. Thus, she ended up spending more than Rs. 2 lakhs by incurring debt for defending the accused. She has borrowed a sum of Rs. 2 lakhs and now, she is in a debt trap. In fact, the Committee records that the indebtedness has become vicious. The only redeeming feature is that during the period of imprisonment of the accused, her marital family took care of her and her daughter.

24. What troubles us is the issue of sentencing. The reports of the Committee stare at our faces. Though the victim did not treat the incident as a heinous crime, she suffered because of it. This was because at an earlier stage, the victim could not make an informed choice due to the shortcomings of our society, our legal

system and her family. In fact, she did not get any opportunity to make informed choice. The society judged her, the legal system failed her, and her own family abandoned her. Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.

26. In law, we have no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute. However, in this case, the society, the family of the victim and the legal system have done enough injustice to the victim. She has been subjected to enough trauma and agony. We do not want to add to the injustice done to the victim by sending her husband to jail. We as Judges, cannot shut our eyes to these harsh realities. Now, at this stage, in order to do real justice to the victim, the only option left before us is to ensure that the accused is not separated from the victim. The State and the society must ensure that the family is rehabilitated till the family settles down in all respects."

10. In that view of the matter, we are of the opinion that the appellant/ applicant has made out a case for grant of bail. Accordingly IA No 01/2024 filed in CRLA No. 100/2024 is allowed. The judgment of conviction and order of sentence passed by the Court of Special Sessions Judge, Uttarkashi in Special Sessions Trial No. 15/2022 hereby stands suspended. The appellant/ applicant shall be forthwith set at liberty, if not wanted in any other case, subject to the appellant/ applicant executing a personal bond for a sum of Rs. 10000/-.

11. At this stage, the learned counsel for the appellant/ applicant would submit that the appellant/ applicant is virtually an orphan, as his father died when he was 2½ years old and his mother abandoned him

when he was about 5 years old; and that initially he grew up with some of his relative, who thereafter have abandoned him, and that he was eking out his livelihood as a driver. In that view, the counsel prays that security may be directed under the provisions of Section 445 of the CrPC. Accordingly, the appellant/ applicant shall be released on deposit of a sum of Rs. 10000/- in terms of Section 445 of the CrPC.

G. NARENDAR, C.J.

ALOK MAHRA, J.

Dt: 17th October, 2025
Rahul