

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2389 OF 2024
(Arising out of SLP (CrI.) NO.5473 of 2023)

'D' APPELLANT (S)
VERSUS
TILAKDHARI SAROJ & ORS. RESPONDENT(S)

O R D E R

Leave granted.

The appellant is the mother of the victim, a young girl, who was allegedly subjected to sexual assault, leading to the registration of FIR No.41 of 2022 on the file of Police Station Pali, District Lalitpur, Uttar Pradesh, under Sections 363, 376, 376-B and 120-B of the Indian Penal Code (for short `IPC`) along with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short `POCSO Act`). Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short `SC and ST Act`) was also added subsequently.

The appellant is aggrieved by the grant of bail to respondent No.1 herein, one of the accused in the said FIR. Pertinent to note, respondent No.1 is the Station House Officer (SHO) of the Police Station at Pali, District Lalitpur.

According to the prosecution, the victim girl, who was aged about 13 years at the time of incident, was placed in the custody of respondent No.1 herein on 27.04.2022 in connection with registering a complaint against four men, who were alleged to have sexually assaulted her. The allegation against respondent No.1 is that he grossly abused his office and committed rape on the minor victim girl himself.

In the light of this serious allegation, the question that arises is, whether the High Court of Uttar Pradesh at Allahabad was justified in granting regular bail to him.

Perusal of the impugned order dated 02.03.2023 reflects that the High Court noted the submissions made by the respective counsel for the parties and baldly stated that the prosecution's allegations do not inspire confidence. The High Court observed that the electronic data and call details showed that the victim (wrongly mentioned as the 'deceased') was not in the police station on 27.04.2022. Significantly, it is no one's case that the victim had a mobile phone. The High Court, thereafter, opined as under:

"13.Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicants being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case

of Satendra Kumar Antil Vs. C.B.I., passed in S.L.P (CrI.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.”

Based on the aforesaid reasoning, the High Court granted bail to respondent No.1 herein, subject to conditions.

This Court had occasion to consider the issue of grant of bail to a police official in a situation where he is alleged to have abused his office in *State of Jharkand vs. Sandeep Kumar*¹ and held against any lenience being shown, by treating such an accused policeman on par with a common man accused of such an offence. Notably, that was not even a case involving a heinous offence. In the present case, the situation is far worse as respondent No.1, being the Station House Officer of the Police Station, where the minor victim girl was brought for securing her justice, is alleged to have resorted to committing the same heinous crime of raping her.

In this situation, his prayer for grant of bail required more than the cursory appraisal that was bestowed by the High Court. We do not find any reasons worth the name justifying the grant of bail to respondent No.1 at this stage.

1 2024 INSC 179

The appeal is accordingly allowed, setting aside the order dated 02.03.2023 passed by the High Court of Judicature at Allahabad in Crl. Misc. Bail Application No. 43236 of 2022. Respondent No.1 shall surrender forthwith, failing which the State shall take necessary steps to apprehend him and send him to judicial custody.

.....J.
[A.S. BOPANNA]

.....J.
[SANJAY KUMAR]

NEW DELHI;
MAY 03, 2024

VERDICTUM.IN

ITEM NO.32

COURT NO.5

SECTION II

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition for Special Leave to Appeal (Crl.) No. 5473/2023

(Arising out of impugned final judgment and order dated 02-03-2023 in CRMA No. 43236/2022 passed by the High Court of Judicature at Allahabad)

'D'

Petitioner(s)

VERSUS

TILAKDHARI SAROJ & ORS.

Respondent(s)

(IA No. 88334/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 89663/2023 - EXEMPTION FROM FILING O.T., IA No. 88335/2023 - EXEMPTION FROM FILING O.T. AND IA No. 89662/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 03-05-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. H.S. Phoolka, Sr. Adv.
Mr. Jagjit Singh Chhabra, Adv.
Mr. Bhuwan Ribhu, Adv.
Ms. Rachna Tyagi,, Adv.
Mr. Saksham Maheshwari, AOR
Ms. Bindita Chatuvedi,, Adv.
Mr. Suraj Kumar, Adv.

For Respondent(s) Mr. Amardeep Sharma, Adv.
Mr. Arun Kumar Saini, Adv.
Mr. Chandra Nand Jha, Adv.
Mr. Chiranjeev Johri, Adv.
Ms. Preeti, Adv.
Mr. Pradeep Kumar Mathur, AOR

Mr. A.K.Misra. A.G., Sr. Adv.
Mr. Arup Banerjee, AOR
Mr. Ajay Singh., Adv.
Mr. Prakash Sharma, Adv.
Mr. Priyanshu Raj, Adv.
Mr. Rajiv Agnihotri., Adv.
Mr. R.K.Dey, Adv.
Mr. Sanjeev Sharma., Adv.

**UPON hearing the counsel, the Court made the following
O R D E R**

Leave granted.

Appeal is allowed in terms of signed order.

Pending application(s) shall stand disposed of.

**(RAJNI MUKHI)
COURT MASTER (SH)**

**(DIPTI KHURANA)
ASSISTANT REGISTRAR**

(Signed order is placed on the file)