

News

Supreme Court "disappointed" with another Allahabad HC judgment, remands case for further hearing



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Allahabad High Court, Supreme Court

The Supreme Court on August 6 expressed concern at an order given by the Allahabad High Court in a case under the Protection of Children from Sexual Offences Act (POCSO Act) and remarked that the argument taken by the High Court failed to apply fundamental legal principles

The Court remarked that this was yet another instance of a decision by the Allahabad High Court with which the top court was "disappointed".

"The impugned order is one more from the High Court of Judicature at Allahabad with which we are disappointed," the Bench of Justices JB Pardiwala and R Mahadevan stated.

The same Bench had recently taken significant issue to another order passed by Justice Prashant Kumar of the Allahabad High Court and had gone the extend of asking that Justice Kumar be de-rostered from hearing criminal matters.

R. Mahadevan and Justice J.B. Pardiwala

In the present case, the Court was dealing with a plea filed by one Aasif alias Pasha, who had been convicted by the special court in Meerut and sentenced to four years of rigorous imprisonment for offences under Sections 7 and 8 of the POCSO Act and under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

He was also punished under Sections 354, 354-Kha, 323, and 504 of the Indian Penal Code. All sentences were ordered to run consecutively.

The conviction was challenged before the Allahabad High Court. While that appeal is still proceeding, the High Court on May 29 dismissed the appellant's application under Section 389 CrPC seeking suspension of punishment. It held:

"This Court does not find any good or sufficient ground so as to enlarge the applicant/appellant on bail during the pendency of present appeal."

The Supreme Court clarified that this was a case of a fixed-term punishment and not one involving life imprisonment or other statutory constraints. Citing its 1999 verdict in Bhagwan Rama Shinde Gosai v. State of Gujarat, the Court said:

"When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence should be considered by the appellate court liberally unless there are exceptional circumstances."

The Bench added highlighted when the appellate court decides that owing to practical circumstances, such appeals cannot be disposed of swiftly, the appellate court must show special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective.

"Otherwise the extremely valuable privilege of the applicant would be an exercise in futility by afflux of time," the Court further noted.

Suspension of punishment in such situations cannot be decided mechanically, especially when the appeal is unlikely to be taken up anytime soon, the Bench stressed.

“Ultimately, if 4 years are to elapse in jail the same would render the appeal infructuous and that would be travesty of justice,” the Bench added.

The Court additionally indicated that the High Court is not expected to rehear the full prosecution case at the suspension stage.

The apex court condemned the approach used by the High Court.

“What the High Court did was to reiterate the entire case of the prosecution and the oral evidence which has come on record. That is not the correct approach,” it said.

The appeal court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution and such an approach is inappropriate, the Supreme Court observed.

The Bench made it plain that whereas suspension of sentence in serious acts like murder must be treated with prudence, this case was obviously different due to the fixed nature of the term.

Hence, it threw aside the High Court’s order and referred the matter back to the High Court for fresh hearing.

“The High Court shall re-hear the application filed by the appellant – herein afresh at the earliest and pass an appropriate order within 15 days from today,” the Court stated.

The court observed that it was "once again forced to observe that such errors seep in at the level of High Court and only because the well-settled rules of law on the matter are not implemented correctly.”