

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No.1399 of 2023

Saurabh Kumar Applicant

Versus

State of Uttarakhand and Another Respondents

Present:-

Mr. Amar Murti Shukla, Advocate for the applicant.

Mr. Akshay Latwal, AGA for the State.

Ms. Mamta Joshi, Advocate for respondent no.2.

Hon'ble Siddhartha Sah, J.(Oral)

By means of the present C-482 application, the applicant has sought quashing of the entire proceedings in Special Sessions Trial No. 50/ 2022, State Vs Saurabh Kumar, pending before the Special Sessions Judge, Almora, arising out of FIR no. 01/ 2022, under Sections 363, 366-A, 376 (3) of the IPC and Section 5 (1)/ 6 of the Protection of Children From Sexual Offences Act, Challani Thana Revenue Area Doba, District Almora; as well as Charge sheet no. 01/ 2022 dated 29.07.2022 (Annexure No.5), under Sections 363, 366-A, 376 (3) of the IPC and Section 5 (1)/ 6 of the Protection of Children From Sexual Offences Act, Challani Thana Revenue Area Doba, District Almora; as well as FIR No.01/2022 dated 31.05.2022, (Annexure No.01) Challani Thana Revenue Area Doba, District Almora and all consequential proceedings.

2. The applicant –Saurabh Kumar along with Mr. Rajpal Singh (father of the applicant) is present in person

duly identified by Mr. Amar Murti Shukla, learned counsel for the applicant. Mr. Girish Lal and Ms. Bhawna (victim) both of whom are present in person duly identified by Ms. Mamta Joshi, counsel for respondent no.2 and Mr. Akshay Latwal, learned AGA for the State.

3. Along with the Criminal Misc. Application, Compounding Application (IA No.1 of 2023) has been filed with the prayer for permitting the parties to compound the offence between the parties and quash the entire proceedings of the aforesaid Special Sessions Trial. The said compounding application is duly supported by the affidavit of Mr. Rajpal Singh (father of the applicant) since at that relevant time, Mr. Saurabh Kumar (applicant) was in jail. An affidavit has also been filed on behalf of respondent no.2 (informant) in support of the compounding application.

4. In the aforesaid affidavits, the applicant as well as the respondent no.2 have stated that the applicant and the victim were in love with each other and had thereafter started staying together as husband and wife. The victim did not want to prosecute the applicant at any time. Now the Respondent no. 2 i.e. father of the victim, is agreeable to the marriage between the parties and does not want to prosecute the above case against the applicant. It is further stated that unless the composition is not accepted, it will be a futile exercise at court below. It has further been stated that the settlement is voluntary and without any pressure or

coercion. The continuation of criminal proceeding will hamper the future matrimonial life of the deponent and the victim. The respondent no.2 does not desire to proceed with the instant case against the applicant and desires that the parties get married with each other.

5. Later on, an affidavit dated 10.03.2025 has been filed on behalf of the victim in which she has stated that the victim and the applicant have decided and are ready to marry with each other. Although at the time of incident, the deponent was minor and now she has attained the age of majority inasmuch as her date of birth is 28.11.2006. The copy of the High School Mark-Sheet has been placed on record as Annexure No.1 to her affidavit. It has been further mentioned in the affidavit that the deponent has settled her all disputes with the applicant and is ready to compound the offence with the permission of this Court. Since the deponent and the applicant are ready to marry with each other, therefore, no fruitful purpose would serve if the proceedings arising out of FIR No.01 of 2022 would be allowed to continue.

6. Learned AGA for the State would submit that since it is a matter, *inter alia*, arising out of POCSO proceedings, hence all the sections for the same are non compoundable. It has further been stated that since at the time of incident, the victim was minor there is no question of

compounding the offences. On this, learned counsel for the applicant has placed on record the judgment of the Hon'ble Supreme Court in the case of Mahesh Mukund Patel vs. State of U.P. and others reported in 2025 SCC OnLine SC 614, wherein, in identical circumstances, the Hon'ble Supreme Court has been pleased to quash the proceedings of Sessions Trial No.1332 of 2021, pending before the Special Judge, POCSO Act, Varanasi. The relevant paras 6 to 9 of the said judgment are being quoted hereunder:-

“6. Our attention is invited to the affidavit filed by the third respondent in which she has accepted the fact that she is happily married to the appellant and they have been residing together. She has disclosed her date of birth as 20th July, 1998. In the record of the Primary School, as can be seen from document at Annexure 'P-1', the date of birth of the third respondent is shown as 20th July, 1998. Ossification test was conducted during the investigation. The report of the test is that on the date of commission of the offence, the age of the third respondent may be between 17½ years to 19 years. There are documents on record to show that the date of birth of the third respondent was 20th July, 1998. Therefore, when the offence was allegedly committed in September, 2016 she was already a major.

7. Now that the appellant and third respondent are happily married, no purpose will be served by continuing the prosecution as it will cause undue harassment to the appellant, the third respondent and their children.

8. Coming to the impugned order, we find that the marriage certificate was placed on record before the High Court. In fact, no objection by the first informant is also recorded in the impugned order. Surprisingly, the High Court instead of entertaining the petition for quashing on the ground of settlement, has observed that the application for dropping criminal proceedings on the basis compromise may be moved before the Trial Court. The High Court completely lost sight of the fact that the Trial Court could not have recorded the settlement and in fact, this was a fit case for the High Court to have exercised its jurisdiction under Section 482 of the Cr. P.C. by quashing the proceedings. Unnecessarily, the parties have been forced to come to this Court.

9. The impugned order is set aside. FIR No. 567 of 2016 registered with Cholapur Police Station, District Varanasi and proceedings of the Sessions Trial No. 1332 of 2021 pending before the Special Judge, POCSO Act, Varanasi are hereby quashed.”

7. Learned counsel for the applicant would further draw the attention of the Court to an order dated 25.06.2025 passed by the Coordinate Bench of this Court in Criminal Misc. Application No.794 of 2025, Mohit vs. State of Uttarakhand and another, wherein an identical circumstances the Coordinate Bench had been pleased to quash the charge-sheet number, summoning order under Sections 363, 366(A), 376 (2)(n) of IPC and Section 5 (l)/ 6 of the Protection of Children From Sexual Offences Act. The relevant paras 26 to 33 of the said judgment dated 25.06.2025 are extracted hereunder:-

“26. In the present case, the victim’s voluntary marriage to the Applicant, subsequent cohabitation, and the birth of a child from the union demonstrate that she has exercised clear autonomy and agency over her life choices. The victim's declaration in court that the FIR was filed under pressure and that no offence occurred supports the contention that the continuation of prosecution would be a travesty rather than a triumph of justice.

27. The victim in this case, now an adult woman, is not merely a silent recipient of justice; she is also a participant in its administration. She has, voluntarily, and repeatedly stated both in court and in her affidavit that the relationship with the applicant was not exploitative. She has now solemnised marriage with the applicant, and they are raising a child together. Her wellbeing, future stability, and social dignity are now intimately linked with the preservation of this family unit.

28. To disrupt that unit at this stage by allowing the trial to continue, or worse, by subjecting the applicant to incarceration, would not merely punish the accused; it would destabilise the life of the victim and permanently impair the emotional and financial security of their newborn child. In effect, the very person the law intended to protect would become the principal sufferer.

29. This Court also finds substantial guidance in the recent and constitutionally significant judgment of the Hon'ble Supreme Court in *In Re: Right to Privacy of Adolescents*, 2024 SCC Online SC 5486, where the Apex Court, while dealing with a conviction under the POCSO Act involving a consensual adolescent relationship, emphasized that the law must be interpreted and applied not in mechanical rigidity, but in alignment with lived realities, constitutional morality, and the principle of complete justice under Article 142. The Supreme Court, taking into account the long-term cohabitation of the victim with the accused, the birth of a child, the failure of the State to protect or rehabilitate the victim, and the irreversible social and economic integration between the parties, observed:

"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."

30. Such an empathetic and realistic reading of justice, grounded in the right to dignity under Article 21 of the Constitution, resonates profoundly with the facts before this Court. Like the case considered therein, the present matter involves not a transient or casual affair but a stable, matrimonial relationship, producing a child whose welfare is now tied to the continuity of this union.

31. It would be a paradox if the law, intended to protect the girl child, were to be used in a manner that destabilises her adulthood, denies her agency, and inflicts trauma upon her young child. In our constitutional scheme, justice must not merely punish, it must protect, restore, and uplift. The woman is not merely a witness or complainant; she is also a citizen, a wife, a mother, and a stakeholder in her own future.

32. The same has been iterated in "*B.P.Achala Anand v. S. Appi Reddy*", (2005) 3 SCC 313, where the Hon'ble SC observed that –

"The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts."

33. Therefore, in light of the evolving constitutional jurisprudence, including the Supreme Court's authoritative pronouncements, this Court deems it necessary to quash the criminal proceedings to prevent the machinery of justice from being misused in a way that causes further injury to the woman and child the law is sworn to protect."

8. Learned counsel for the applicant has also relied upon another judgment of the Coordinate Bench of this Court dated 27.08.2025 rendered in Criminal Misc. Application No.1422 of 2025, Gaurav Kumar alias Gaurav Gujjar vs. State of Uttarakhand and others, wherein the Coordinate Bench was pleased to quash the entire proceedings of Special Sessions Trial in matter arising out under Sections 363, 366(A), 376 (2)(n) of IPC and Section 5 (l)/ 6 of the Protection of Children From Sexual Offences Act and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The relevant paras 11 and 12 of the said judgment are extracted hereunder:-

"11. Though this Court would normally be hesitant to quash the proceedings under Sections 363, 366A, 376 of the Indian Penal Code, 1860 and the proceedings under the provisions of the Protection of Children from Sexual Offences Act, 2012 and the proceedings under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, but, it is noticed that the applicant and the victim got married and they are living happily with their minor son. In these circumstances, in case, the proceedings are allowed to continue, it would amount to denial of complete justice to the parties. Therefore, it is a case, in which the inherent jurisdiction of this Court should be exercised to do real and substantial justice.

12. Considering the totality of the matter, this Court is of the view that ends of justice would be met if the entire proceedings of Special Sessions Trial No.49 of 2022, "State vs. Gaurav Kumar alias Gaurav Gujjar", pending

before the court of Special Judge (POCSO)/District and Sessions Judge, Tehri Garhwal, are quashed.”

9. Another judgment relied upon by the learned counsel for the applicant is in Criminal Jail Appeal No.29 of 2021, Girish Lal vs. State of Uttarakhand, wherein in similar circumstances, the Coordinate Bench was pleased to quash the proceedings at the appellate stage pertaining to offences under Sections 363, 366A and 376 of IPC and under Sections 3/4, 5(j)(ii)/6 of the Protection of Children From Sexual Offences Act, 2012. The relevant paras 8, 9 and 10 of the said judgment are extracted hereunder:-

“8. So far as the instant case is concerned, the victim Smt. Shanti Devi, is present in person, she admits the fact, that the girl child, who has been born to her, was out of the relationship which she had with the present appellant, who is presently languishing in jail, and he is serving the sentence as it has been imposed upon him by the judgment dated 19.02.2021. She submits that owing to the fact, that now they have married, and the marriage has been registered, and the proof of registration has been placed before this Court on record with the compounding application, and more sympathetically because of the fact that the girl child has born, who is presently living with the victim, she submits that the offence may be compounded because since they are now having a matrimonial relationship no purpose would be solved to proceed with the criminal appeal, as against the judgment of the conviction.

9. Owing to the principle laid down by the coordinate Bench of this Court in the judgment referred to hereinabove, and in the context of the provisions contained under sub-section (5) of section 320 of Cr.P.C., this Court is of the view that this would be the one of the fittest case in which the appellate court too could grant leave to compound the offences, after the conclusion of the trial, and rendering of the judgment of the conviction, particularly when, the factum of the marriage, is a fact, which is admitted by the victim, who is present in the Court, as well as, the learned counsel representing them.

10. In that view of the matter, since there is a registered marriage, and there happens to be a girl child born out of the relationship of the present appellant and the victim, the present compounding application would

stands allowed, in the light of the principles laid down in the matters of Sarfaraz (Supra), as a result thereto the judgment of the conviction dated 19.02.2021, would hereby stands quashed in terms of the compounding application, while exercising my powers under sub-section (5) of section 320 of Cr.P.C., as a result thereto, the appellant who is presently languishing in jail is directed to be released forthwith, without any conditions being imposed upon him, owing to the acquittal due to the quashing of the judgment of conviction dated 19.02.2021.”

10. In the present case, a query was made by the Court to the victim who was present in person duly identified by her counsel Ms. Mamta Joshi. On a query made by the Court the victim has stated before the Court that she has married with the applicant on 01.12.2025 at Badaun and she is carrying a pregnancy of six months from the said wedlock. Though the offence under the provisions of POCSO Act is not compoundable, but in view of the judgment of the Supreme Court in the case of Mahesh Mukund Patel (*supra*) and the judgment of this Hon’ble Court in the case of Girish Lal, Gaurav Kumar alias Gaurav Gujjar and Girish Kumar Sharma, it is apparent that the High Court can compound the cases under the POCSO Act in deserving cases. In the present case, the victim and the applicant have happily married and are living a settled life and in fact, the victim has already stated before this Court that she is happily settled with the marriage and does not wish to pursue the matter any further, hence, in such view of the matter, letting the matter go into trial would be a futile exercise. It is also pertinent to mention that the Hon’ble Supreme Court in the case of Gian Singh vs. State of Punjab,

2012 (10) SCC 303, Dimpey Gujral vs. Union Territory, Chandigarh, (2013) 11 SCC 497, B.S. Joshi vs. State of Haryana, (2003) 4 SCC 675, Nikhil Merchant vs. CBI, (2008) 9 SCC 677 has laid down the law for compounding in non compoundable cases as well.

11. In view of the overall conspectus of the case and particularly in view of the judgment of the Hon'ble Supreme Court in the case of Mahesh Mukund Patil (*supra*) and the other judgments of Coordinate Benches of this Court and in the peculiar facts and circumstances of the case, the compounding application deserves to be allowed.

12. The Compounding Application (IA No. 1 of 2023) is hereby allowed and thus the entire proceedings of Special Sessions Trial No. 50/ 2022, State Vs Saurabh Kumar, pending before the Special Sessions Judge, Almora, arising out of FIR no. 01/ 2022, under Sections 363, 366-A, 376 (3) of the IPC and Section 5 (1)/ 6 of the Protection of Children From Sexual Offences Act, Challani Thana Revenue Area Doba, District Almora, are hereby quashed.

13. The instant C-482 application is, accordingly, disposed of.

14. All pending applications, if any, stand disposed of accordingly.

(Siddhartha Sah, J.)
03.07.2026