



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1939 of 2026

Nurmohhmad @ Nur Mohammad

.....Appellant(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Appellant(s)	: Jawad Tariq, Raj Kumar Singh
Counsel for Respondent(s)	: G.A.

Court No. - 69

Reserved On 12.5.2026
Delivered On 25.6.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Jawad Tariq, learned counsel for the appellants; Sri Shyam Narain Rai, learned AGA for State and perused the materials on record including the trial court records.
2. This criminal appeal is preferred under Section 415(2) of B.N.S.S., 2023 by the accused appellant Nurmohhmad @ Nur Mohammad to set aside the judgment and order dated 23.12.2025, passed by the Additional Sessions Judge/POCSO Court No.3, Aligarh in Criminal Session No.90077 of 2018 (State of U.P. Vs. Nurmohhmad @ Nur Mohammad), arising out of Case Crime No.168 of 2018, under Sections 354Ka, 354Kha, 342 IPC and Section 7/8

of POCSO Act, Police Station–Gonda, District–Aligarh, whereby the appellant has been sentenced to five years rigorous imprisonment under Section 354Kha IPC alongwith fine of Rs.25,000/- and in default of payment of fine to undergo two months simple imprisonment; sentenced to six months rigorous imprisonment under Section 342 IPC alongwith fine of Rs.2,000/- and in default of payment of fine to undergo one month simple imprisonment. All the sentences are directed to run concurrently.

3. In this case, the first informant is PW-1, Sahab Singh @ Bacchu Singh, who is the grandfather of the victims. He submitted a written report (Ex.Ka.1), stating therein that on 16.5.2018 his granddaughter, victim X along with her cousin, victim Y, had gone to Noor Muhammad's shop to buy toffees etc. The ages of both the girls are approximately 7 years and 8 years. When both the children reached the shop at 5.30 pm, Noor Muhammad locked both the children in the shop and started doing obscene acts and both the girls started screaming and came home crying and escaping. When many people reached Noor Muhammad's shop, he left the shop and ran away. On the basis of this written report, FIR was registered under Sections 354Ka, 342 IPC and Section 7/8 of POCSO Act as Case Crime No.168 of 2018 at Police Station Gonda, District Aligarh.

4. The investigation started, and statements of witnesses were recorded. After investigation, charge sheet was filed under Sections 354Ka, 354Kha, 342 IPC and Section 7/8 of POCSO Act. The Magistrate took cognizance of the case and committed it to the Court of Sessions,

where it was registered as Criminal Session No.90077 of 2018 (State of U.P. Vs. Nurmohammad @ Nur Mohammad), arising out of Case Crime No.168 of 2018, under Sections 354Ka, 354Kha, 342 IPC and Section 7/8 of POCSO Act, Police Station-Gonda, District-Aligarh. Charges were framed against the accused. He denied the charges and demanded trial.

5. To prove its case, the prosecution produced the following documentary evidence:-

- "1. *Written Report dated 16.5.2018 (Ex.Ka.1)*
2. *Statement u/s 164 Cr.P.C. dated 19.5.2018 (Ex.Ka.2)*
3. *Statement u/s 164 Cr.P.C. dated 19.5.2018 (Ex.Ka.3)*
4. *Site Plan dated 17.5.2018 (Ex.Ka.4)*
5. *Arrest Memo (Ex.Ka.5)*
6. *Final Form/Report dated 30.5.2018 (Ex.Ka.6)*
7. *Duplicate FIR (Ex.Ka.7)*
8. *FIR dated 16.5.2018 (Ex.Ka.8)"*

6. Apart from the documentary evidence, the prosecution also submitted oral evidence. The witnesses examined, Sahab Singh @ Bacchu Singh (PW-1), Deeksha (PW-2), Harshita (PW-3), Kumkum (PW-4), Devendra Kumar Yadav (PW-5), Anand Kumar (PW-6), Smt. Sulekha Rani (PW-7) in support of the prosecution case.

7. Accused has produced Prempal and Raj Kumar as DW-1 and DW-2.

8. Learned counsel for the accused appellant submits that though the accused appellant is named in the FIR but he is an old aged person having age of more than 80 years and he is a retired teacher and has been falsely implicated due to ulterior motive and previous dispute between the informant and the accused appellant. It is further submitted that there are material contradictions in the statement of prosecution witnesses. Learned counsel for the appellant without going into the merits of the case,

argued only on the point of sentence. Submission is that the appellant is suffering from various old age ailments and in the event this Court arrives at a finding of guilt, it is prayed that the accused-appellant be extended the benefit of probation, considering his advance age.

9. Learned AGA has opposed the argument and submit that though the accused appellant is an old aged person having age of 80 years but he has committed a very heinous offence with the minor victims having age of about 8 years only. It is submitted that the trial court has rightly held the accused appellant guilty and awarded maximum sentence of five years rigorous imprisonment in the present case on the basis of reliable evidence available on record.

10. In this case, the accused appellant has been held guilty for the offence under Section 354B, 342 IPC and the maximum sentence awarded to him is five years rigorous imprisonment alongwith fine.

11. The FIR has been registered by the grandfather of the victims, wherein it is stated that accused appellant has committed obscene behaviour with his minor granddaughters namely, X and Y, having age of seven years and eight years respectively. The FIR was promptly registered and FIR contains allegation of committing offence of outraging the modesty/sexual assault with the minor victims. During the course of Investigation the statement of two victims were recorded. The victim X stated in her statement under section 164 Cr.P.C. that she was going for tuition along with other victim Y and they went to the shop of Noori, who took them inside the shop and took kiss and put his hand inside the undergarments

of the victim and intimidated them not to disclose to anyone. The other victim Y also stated the same in her statement under section 164 Cr.P.C. In the medical evidence, no any internal or external injuries were seen on the victims. Admittedly, as per the prosecution version accused has not committed any injury in this case but the allegation against the appellant is kissing and touching the private parts of the minor victims having age of about eight years. The FIR was registered by the grandfather of the victims, who has been examined as PW-1. Though PW-1 has not supported the prosecution version but he stated in his statement that both the minor girls were coming weeping and crying and disclosed that accused has committed obscene behaviour with them. Admittedly, the informant PW-1 is not an eye-witness of this case but in his cross-examination he stated that he registered the FIR as some people advised him and he has no knowledge about the incident and FIR contents were not read over to him and he has been declared hostile but in cross examination he admits the fact that a compromise was entered into between him and accused and accused has accepted his mistake that is why PW-1 does not want to continue criminal proceeding against the appellant.

12. PW-2 is the first victim namely, X, who is about twelve years of age and she stated the same version as that of her statement recorded under section 164 Cr.P.C. that accused appellant has kissed on her private part and disrobed her. Admittedly, the defense has not cross-examined this witness which demonstrates that the statement given by the victim X is unrebutted. Thus, on

the basis of statement of victim X the allegation against the accused appellant appears to be reliable.

13. The victim Y, who is said to be thirteen years of age, has stated the same that she and victim X went to shop of accused appellant, where accused has kissed them on their private parts and both the victims told the incident to their sister Kumkum regarding role and involvement of accused appellant about his obscene behaviour. In cross-examination no any adverse statement has been given by the victim X regarding obscene behaviour or sexual assault by the accused appellant and she also stated the same in her statement recorded before the Magistrate. Admittedly, in this case, age of the victim X and Y was below twelve years, therefore, it was required for the concerned Magistrate to examine the mental capacity of the victims regarding understanding the reasonable question and giving proper answer but the concerned Magistrate has recorded statement of victims under Section 164 Cr.P.C. without proper examination of the witnesses regarding their mental capacity which is an omission on part of the concerned Magistrate. Though at the time of recording the statement before the trial court the age of the victims were about 12-13 years even then some general questions should be put before the witness to testify their mental capacity but at the time of trial also the concerned Judicial Officer has committed omission on his part.

14. Learned counsel for the appellant placed reliance upon the judgment of Supreme Court in **Debraj Dutta Vs. State of West Bengal & Ors.** (Criminal Appeal No.... of 2026, Petition for Special Leave to Appeal Crl. No.16383/2025), **Pradeep Vs. The State of Haryana** AIR

2023 SC 3245, Aejaz Ahmad Sheikh Vs. State of U.P. & Ors. Decided on 22.4.2025 (Criminal Appeal Nos.2142 of 2017 and 2143-2144 of 2017), Laldingluaia Vs. State of Mizoram & Ors. Decided on 20.11.2024 CRLA(J)/2/2024.

15. The formal witnesses PW-5,6,7 have proved the formal prosecution papers date of birth certificate, site plan, chik FIR etc. This Court finds no material contradictions in the statement of formal witnesses.

16. The accused appellant has rightly been held guilty for the offence under sections 354Kha, 342 IPC. Admittedly, in this case, the age of the accused appellant mentioned in the statement recorded on 30.6.2025 under Section 313 Cr.P.C as well as the custody certificate is 80 years which indicates that at present the age of the accused is **80-81 years** and he is stated to be a retired teacher. Accused appellant is first offender and no criminal antecedent of appellant has been submitted by learned AGA. The incident is said to be occurred in the year 2018 and the maximum sentence awarded to the appellant in this case is only five years.

17. Sections 4 and 5 of the Probation of Offenders Act, 1958 are reproduced below for ready reference:-

"4. Power of court to release certain offenders on probation of good conduct.— (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay compensation and costs.—*(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—*

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages."

18. In Sitaram Paswan and Another vs. State of Bihar, (2005) 13 SCC 110, the Apex Court has held as under:-

"For exercising the power which is discretionary, the court has to consider the circumstances of the case, the nature

of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the courts while finding the person guilty and if the court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the court even at the appellate or revisional stage and also by this Court while hearing the appeal under Article 136 of the Constitution."

19. In Lakhanlal alias Lakhan Singh vs. State of Madhya Pradesh, (2021) 6 SCC 100, the Apex Court held as under:-

"10. A three-Judge Bench of this Court in Rattan Lal v. State of Punjab, AIR 1965 SC 444, while examining the provisions of the 1958 Act held that in case the offenders are below 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, it is not desirable to deal with them under Sections 3 and 4 of the 1958 Act but in respect of offenders who were above age of 21 years, the Court has absolute discretion to release such offenders either after admonition or on probation of good conduct. The Court held as under:

"4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of

offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act."

11. *This Court in Jugal Kishore Prasad v. State of Bihar, (1972) 2 SCC 633 explained the rationale of the provision as to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The Court held as under:*

"6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act."

20. In **Mohd. Hashim vs. State of Uttar Pradesh and Others, (2017) 2 SCC 198**, the Apex reiterated the exercise of discretionary power of the court under Probation of Offenders Act as under:-

"21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In Ram Parkash v. State of H.P., (1972) 4 SCC 46, while dealing with Section 4 of

the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word "may" used in Section 4 of the PO Act does not mean "must". On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguish offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:

"7.... While in the case of offenders who are above the age of 21 years. absolute discretion is given to the court to release them after admonition or on probation of good conduct in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act. (Rattan Lal v. State of Punjab, AIR 1965 SC 444 and Ramji Missar v. State of Bihar, AIR 1963 SC 1088.)"

Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit under Section 4 of the PO Act.

22. We have referred to the aforesaid authority to stress the point that the court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82, it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:

"9. ... The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In *State of Gujarat v. Jamnadas G. Pabril*, (1975) 1 SCC 138, a two-Judge Bench of this Court

has considered the word "expedient". The learned Judges have observed in para 21 thus:

21.... Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient": "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary)'. 10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

21. In Chellammal and Another vs. State represented by the Inspector of Police, 2025 LiveLaw (SC) 461, where the Sessions Judge has acquitted the appellants (mother-in-law and husband) of the charge under Section 304-B IPC but convicted them under Section 498-A, the Apex Court has held as under:-

"Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the

answer be in the negative, it would only be just and proper for the court to record ord the reasons therefore."

22. At present, the accused-appellant is an elderly person, aged more than 80 years. No reliable material has been brought this Court to indicate that he is a habitual offender or he has any criminal antecedents. There is nothing on record to show the misuse of liberty during pendency of this appeal. The possibility of reformation cannot be rule out. Furthermore, learned counsel for the appellant has not assailed the conviction on merits but has confined his argument particularly to the question of sentence and prayed for extending the benefit of probation as provided under Section 4 of the Probation of Offenders Act.

23. Having considered the submissions advanced by the parties and material evidence available on record, extreme old age of the appellant, period of incarceration undergone by the appellant is more than five months, this Court is of the considered opinion that the benefit of probation deserves to be extended to the accused-appellant under Section 4 of the Probation of Offenders Act, 1958.

24. Thus, in view of the above specific facts and circumstances, it would be just and proper to release the accused-appellant on probation. The appeal is, thus, partly allowed with modification in sentence. The conviction of the appellant under Sections 354Kha, 342 IPC is hereby affirmed. However, the sentence of five years rigorous imprisonment is set aside.

25. In view of the modification of sentence and release of the appellants on probation, the bail bonds and sureties furnished earlier during trial/appeal shall stand discharged.

26. Let the accused-appellant Nurmohammad @ Nur Mohammad be released on probation under Section 4 of the Probation of Offenders Act, 1958, subject to the following conditions:-

(i) The accused-appellant shall execute a 'fresh' personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety of the like amount to the satisfaction of the court concerned for a period of one year with an undertaking that they shall maintain peace and good behaviour and will not involve in any criminal activity.

(ii) Invoking Section 5 of the Probation of Offenders Act, the appellant is directed to pay compensation of Rs.50,000/- (Fifty thousand rupees only) for the offence under Sections 354Kha, 342 IPC and the whole compensation amount shall be distributed equally to both the victims within a period of one month from today. In case of death of victims, the appellant shall pay the same to their legal representatives.

(iii) The appellant shall deposit the above compensation amount before the trial court concerned within stipulated period and the trial court, after notice and verification, shall distribute the above amount among the victim(s)/their legal heirs through bank accounts.

(iv) In the event of breach of any of the aforesaid conditions, the accused-appellant shall be liable to undergo the sentence as awarded by the trial court to serve the original sentence.

27. Trial court shall ensure compliance and seek report from the Probation Officer for supervision.

28. The appellant is directed to appear before the trial court forthwith to furnish the requisite bonds. In case of default, the trial court shall be at liberty to proceed in accordance with law, including issuance of coercive process.

29. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

30. The trial court is directed to submit its compliance report to this Court within two months of the receipt of this order. Furthermore, the registry is also directed to place the compliance report on record.

(Santosh Rai,J.)

June 25, 2026
RA