



SLP(Crl.)No. 1059/2025

ITEM NO.5

COURT NO.14

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No. 1059/2025

[Arising out of impugned final judgment and order dated 15-05-2024 in CRMA No. 13628/2024 passed by the High Court of Judicature at Allahabad]

MAULVI SYED SHAD KAZMI @ MOHD. SHAD

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

IA No. 15997/2025 - CONDONATION OF DELAY IN FILING

IA No. 15998/2025 - EXEMPTION FROM FILING O.T.

Date : 27-01-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :Mr. K. L. Janjani, AOR
Mr. Anil Kumar Pandey, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Kailash J. Kashyap, Adv.

For Respondent(s) :Ms. Garima Prashad, Sr. Adv., A.A.G.
Mr. Ankit Goel, AOR

Mr. Harshit Singhal, Adv.

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

1. The Petitioner has been denied bail by the High Court of Judicature at Allahabad in connection with case Crime No. 74/2024 registered with Naubasta Police Station, District Kanpur Nagar for the offence punishable under Sections 504 and 506 respectively of the Indian Penal Code, 1860 (for short the "IPC") and Section 3 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (for short the "Act, 2021") punishable under Section 5 of the Act, 2021.
2. It is the case of the prosecution that a mentally retarded minor was forcibly kept by the petitioner herein serving as a Maulvi in a Madarasa. It is further alleged that the Maulvi i.e. the petitioner herein converted the minor to a muslim.
3. In such circumstances referred to above, the petitioner is said to have committed an offence under Section 3 of the Act, 2021 punishable under Section 5 of the Act, 2021.
4. Section 3 of the Act, 2021 reads thus:-

"3. Prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement.-(1)
No person shall convert or attempt to convert, either directly or otherwise, any other person from

one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means. No person shall abet, convince or conspire such conversion.

Explanation.—For the purposes of this sub-section conversion by solemnization of marriage or relationship in the nature of marriage on account of factors enumerated in this sub-section shall be deemed included.

(2) If any person re-converts to his immediate previous religion, the same shall not be deemed to be a conversion under this Act.

Explanation.—For the purposes of this sub-section immediate previous religion means the religion in which the person had faith, belief or was practiced by the person voluntarily and freely.”

5. Section 5 of the Act, 2021 reads thus:-

“5. Punishment for contravention of provisions of Section 3.—(1) Whoever contravenes the provisions of Section 3, shall, without prejudice to any civil liability, be punished with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than fifty thousand rupees:

Provided that whoever contravenes the provisions of Section 3 in respect of a minor, a disabled or mentally challenged person, a woman or a person belonging to the Scheduled Castes or the Scheduled Tribes, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to fourteen years and shall also be liable to fine which shall not be less than one lakh rupees:

Provided further that whoever contravenes the provisions of Section 3 in respect of mass conversion of religion shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine

which shall not be less than one lakh rupees.

(2) Whoever receives money from any foreign or illegal institutions in connection with unlawful religious conversion shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine which shall not be less than ten lakh rupees.

(3) Whoever, with the intent to convert, puts any person in fear of his life or property, assaults or uses force or marries or promises to marry or induces or conspires for the same, or traffics a minor, a woman or a person by enticing them or otherwise selling them, or abets, attempts or conspires in this behalf, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

(4) The Court shall also approve appropriate compensation payable by the 4) accused to the victim of the said conversion, which may extend to five lakh rupees, in addition to the fine.

(5) Whoever, having previously been convicted of an offence under this Act, is again convicted of an offence punishable under this Act, shall, for every such subsequent offence, be liable to a punishment not exceeding twice the punishment provided in that behalf under this Act."

6. We have heard Mr. K. L. Janjani, the learned counsel appearing for the petitioner and Ms. Garima Prashad, the learned Additional Advocate General appearing for the State.

7. According to Ms. Prashad the trial has commenced and so far as 7 witnesses have been examined by the trial court.

8. She further submitted that the case falls within the proviso to Section 5 as the allegations are one of converting the religion of a minor, and therefore, the maximum punishment is up to 10 years.

9. On the other hand, the learned counsel appearing for the petitioner pointed out that there is no case worth the name against the petitioner herein and he has been in custody past more than 11 months. He submitted that the child being mentally challenged was abandoned by the parents and was thrown on the streets. The petitioner on humanitarian grounds brought the child to his place and gave him shelter.

10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the High Court should have exercised its discretion by granting bail to the petitioner. There was no good reason for the High Court to decline bail. The offence alleged is not that serious or grave like murder, dacoity, rape etc.

11. We can understand that the trial court declined bail as trial courts seldom muster the courage of granting bail, be it any offence. However, at least, it was expected of the High Court to

muster the courage and exercise its discretion judiciously.

12. We are conscious of the fact that grant of bail is a matter of discretion. But discretion has to be exercised judicially keeping in mind the well settled principles of grant of bail. Discretion does not mean that the judge on his own whims and fancy declines bail saying conversion is something very serious. The petitioner is going to be put to trial and ultimately if the prosecution succeeds in establishing its case, he would be punished.

13. Every year so many conferences, seminars, workshops etc. are held to make the trial judges understand how to exercise their discretion while considering a bail application as if the trial judges do not know the scope of Section 439 of the CrPC or Section 483 of the BNSS.

14. At times when the High Court declines bail in the matters of the present type, it gives an impression that altogether different considerations weighed with the presiding officer ignoring the well settled principles of grant of bail.

15. In fact, this matter should not have reached up to the Supreme Court. The trial court itself should have been courageous enough to exercise its discretion and release the petitioner on bail.

16. We fail to understand what harm would have befallen on the prosecution if the petitioner would have been released on bail

subject to appropriate terms and conditions.

17. This is one of the reasons why the High Courts and now unfortunately the Supreme Court of the country is flooded with bail applications.

18. In one of the matters, we have taken the view that ordinarily once the trial commences, the court should be loath in releasing the accused on bail, but it all depends on the nature of the crime. Had it been a case of murder or any other serious offence we would have declined.

19. In the present case, although the trial is in progress and the prosecution witnesses are being examined yet it is a fit case to order release of the petitioner on bail subject to terms and conditions that the trial court may deem fit to impose.

20. The petition succeeds and it is hereby allowed.

21. The petitioner is ordered to be released on bail subject to terms and conditions that the trial court may deem fit to impose

22. The release of the petitioner should not now come in the way of the trial. Let the trial proceed expeditiously in accordance with law.

23. We clarify that the guilt or the innocence of the accused shall be determined on the strength of the substantive evidence that may come on record and without being influenced in any manner

by any of the observations made by this Court.

24. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)