

2026 LiveLaw (SC) 168

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL/APPELLATE JURISDICTION

SURYA KANT; CJI., JOYMALYA BAGCHI; J. N.V. ANJARIA; J.

Suo Moto Writ Petition (Criminal) No. 1 / 2025; FEBRUARY 10, 2026

In Re: Order dated 17.03.2025 Passed by the High Court of Judicature at Allahabad in Criminal Revision No. 1449/2024 and Ancillary Issues

Criminal Jurisprudence – Distinction between "Preparation" and "Attempt" – Section 376 r/w Section 511 of the IPC and Section 18 of the POCSO Act – The Supreme Court set aside an Allahabad High Court order that had downgraded a summons from "attempt to commit rape" to a lesser charge of Section 354B IPC - held that when accused persons act with pre-determined intent, execute *mens rea* through overt acts (such as dragging a victim toward a culvert), and are only stopped by the intervention of third parties, the stage of "preparation" has concluded and an "attempt" has commenced.

Judicial Sensitivity – Protection of Vulnerable Victims – Guidelines – Taking note of the "insensitivity" and "impassive judicial decisions" in cases involving sexual offences, the Supreme Court directed the National Judicial Academy to constitute a Committee of Experts to draft comprehensive guidelines - These guidelines aim to inculcate compassion and empathy into the judicial process, specifically for cases involving children and women. [Relied on *State of Madhya Pradesh v. Mahendra alias Golu*, (2022) 12 SCC 442; Paras 11-24]

with Criminal Appeal No. of 2026 (Arising out of Special Leave Petition (Criminal) No. of 2026) (Diary No. 15692/2025) with Criminal Appeal No. of 2026 (Arising out of Special Leave Petition (Criminal) No. of 2026) (Diary No. 21813/2025)

For Petitioner(s): Mr. Prashant Padmanabhan, AOR Mr. H. S. Phoolka, Sr. Adv. Mr. Bhuwan Ribhu, Adv. Ms. Rachna Tyagi, Adv. Ms. Shashi, AOR Mr. Saksham Maheshwari, Adv. Ms. Surabhi Katyal, Adv. Ms. Surpreet Kaur, Adv. Mr. Amar Lal, Adv. By Courts Motion, AOR

For respondent(s) Mr. Sharan Dev Singh Thakur, Sr. A.A.G. Ms. Ruchira Goel, AOR Mr. Sharanya, Adv. Ms. Ritika Rao, Adv. Ms. Ayushi Srivastava, Adv. Ms. Shobha Gupta, Sr. Adv. Mr. Aditya Ranjan, AOR Ms. Yogmaya MG, Adv. Ms. Komal Saini, Adv. Ms. Siny Sara Varghese, Adv. Mr. Rohin Bhatt, Adv. Mr. Sharan Dev Singh Thakur, Sr. A.A.G. Ms. Ruchira Goel, AOR Mr. Sharanya, Adv. Ms. Ritika Rao, Adv. Ms. Ayushi Srivastava, Adv. Mr. Pritam Singh, Adv. Mr. Umesh Kumar Shukla, Adv. Ms. Parvathi Menon, Adv. Mr. Sangeeth Mohan, Adv. Mr. Rahul Gupta, AOR

J U D G M E N T

SURYA KANT, J.

Permission to file Special Leave Petitions in Diary No. 15692/2025 and Diary No. 21813/2025 is granted.

2. Application for intervention is allowed.

3. Leave granted.

4. The instant *suo motu* writ petition was registered in accordance with the directions of Hon'ble the Chief Justice of India, prompted by a letter dated 20.03.2025 received from an organisation named 'We the Women of India', through its Founder President, Ms. Shobha Gupta, Senior Advocate.

5. *Vide* the said letter, she brought our attention to a judgment dated 17.03.2025 passed by a Single Judge of the High Court of Judicature at Allahabad ("High Court") in Criminal Revision No. 1449/2024, whereby the learned Single Judge has modified the

order of summons dated 26.03.2023 issued by the Special Judge (POCSO), Kasganj to two accused persons in Complaint Case No. 23/2022. While the Trial Court had originally issued summons under Section 376 of the Indian Penal Code, 1860 ("IPC") read with Section 18 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"), the High Court has revised the same to be under a lesser charge under Section 354B of the IPC read with Sections 9 and 10 of the POCSO Act. As per the High Court, this action was necessitated owing to its finding that a *prima facie* view of the alleged facts did not make out a case for attempt to commit rape.

6. Ms. Gupta, through the letter, urged that the observations made and reasoning adopted by the High Court to reach the said conclusion are erroneous in law, insensitive, irresponsible, and likely to demoralise all efforts towards protecting women and other vulnerable persons from sexual offences.

7. Similar concerns have also been highlighted by the appellants in Diary Nos. 15692 and 21813/2025, which assail the same judgment dated 17.03.2025 of the High Court. While Diary No. 21813/2025 has been filed by an NGO registered in Kolkata, the petitioners in Diary No. 15692/2025 include an NGO registered in Delhi as well as the complainant in Complaint Case No. 23/2022, who is the mother of the minor victim.

8. Notice was issued to the Union of India, the State of Uttar Pradesh, and the parties to the Criminal Revision before the High Court *vide* order dated 26.03.2025. Simultaneously, the observations of the High Court in paragraphs 21, 24, and 26 of the impugned order were stayed. Subsequently, on 08.12.2025, this Court stayed the operation of the entire judgment dated 17.03.2025, clarifying that the trial in Complaint Case No.23/2022 shall proceed as if the summons had been issued under Section 376 read with Section 511 of the IPC and Section 18 of the POCSO Act.

9. We have heard Ms. Shobha Gupta, learned Senior Counsel, Mr. H.S. Phoolka, learned Senior Counsel, representing the Delhi-based NGO and the complainant-mother, and Mr. Sharan Dev Singh Thakur, learned Senior Additional Advocate General for the State of Uttar Pradesh. We have already recorded in our previous order dated 08.12.2025 that the accused persons are fully aware of these proceedings, and despite the service of notice, no one has entered appearance on their behalf. Besides this, we have perused the various documents placed on record by the parties, including the intervention applicant.

A. RE: IMPUGNED JUDGMENT DATED 17.03.2025

10. The High Court's decision in the impugned judgment hinges on whether the accused persons have only 'prepared' to commit the offence of rape or have moved beyond that to have 'attempted' to commit the said crime. Notably, the High Court has concluded that the actions of the accused persons were limited only to the former, thereby warranting a modification in the charge on which the accused were summoned.

11. The meaning, scope, and comparative understanding of the concepts of 'preparation' and 'attempt' in criminal jurisprudence has been cogently explained by a 2-judge bench of this Court, in a judgment authored by one of us (Surya Kant, J., as he then was) in State of Madhya Pradesh v. Mahendra alias Golu, reported in (2022) 12 SCC 442. It may be pertinent, at this stage, to reproduce paragraph 13 thereof:

"13. There is a visible distinction between "preparation" and "attempt" to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of "preparation" consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence.

Whereas, an "attempt" to commit the offence, starts immediately after the completion of preparation. "Attempt" is the execution of mens rea after preparation.

"Attempt" starts where "preparation" comes to an end, though it falls short of actual commission of the crime."

[Emphasis supplied]

12. In the instant case, the High Court recorded the factual allegations made against the accused persons in paragraphs 21 and 22 of its judgment. It is stated that the accused persons took the minor victim with them as a pillion rider on their motorcycle, after assuring her mother (the complainant) that they would drop the victim at her residence. The accused persons, instead, stopped the motorcycle near a culvert, dragged her towards it, and committed sexually offensive acts, which have been recorded in the said paragraphs of the impugned judgment. However, due to the shrieks of the minor victim, two witnesses reached the spot, causing the accused persons to flee from the site.

13. A bare perusal of these allegations leaves no modicum of doubt that the case sought to be made out is that the accused persons proceeded with a pre-determined intent to commit an offence under Section 376 of the IPC on her. In light of the overt averments recorded in the Criminal Application filed by the complainant-mother under Section 156(3) of the Code of Criminal Procedure, 1973, it becomes readily apparent that, from the story of the complainant, the *mens rea* involved had begun to be executed. This understanding is bolstered by the High Court's own recording that the only reason why the crime was not furthered was the above-mentioned intervention by third-party witnesses.

14. The facts alleged being so, we cannot agree with the finding of the High Court that the allegations only amount to preparation, but not an attempt, towards the commission of the offence of rape. The attempt made by the accused persons appears clearly and inevitably leads us to conclude that, *prima facie*, a case for invoking the provisions of attempt to commit rape has been made out by the complainant and the prosecution. The impugned judgment, thus, is liable to be set aside on account of the patently erroneous application of the settled principles of criminal jurisprudence.

15. Hence, the instant Criminal Appeals, arising out of Diary Nos. 15692 and 21813/2025, are allowed. The impugned judgment dated 17.03.2025 is set aside, and the original summons order dated 23.06.2023 passed by the Special Judge (POCSO), Kasganj is restored. As a necessary consequence, the clarification provided in paragraph 5 of our interim order dated 08.12.2025 stands confirmed. Ordered accordingly.

16. It goes without saying that the observations made by this Court through this judgment are only from a *prima facie* perspective on the case made by the complainant, and they shall not be taken to be any opinion on the guilt of the accused persons, which is the subject matter of the ongoing trial.

B. RE: BROADER ISSUE OF GUIDELINES FOR INCULCATING SENSITIVITY AND COMPASSION INTO JUDICIAL APPROACH

17. Ms. Gupta and Mr. Phoolka, learned Senior Counsel, have, apart from pointing out the legal flaws in the impugned judgment, also urged this Court to take cognisance of the insensitivity reflected in the impugned judgment towards the plight of the minor girl, who is alleged to have been the victim of sexual offences. They submit that there have been various instances of impassive judicial decisions, across different levels of the judiciary, where judges and judicial officers have failed to imbibe compassion and empathy in the manner of handling matters involving sexual offences, especially when it comes to

vulnerable and/or minor victims and witnesses. In this vein, the learned Senior Counsel/counsel for the parties have pleaded that certain guidelines may be laid down by this Court to prevent such issues from arising in the future.

18. We find some strength in the issues raised before us. The judicial system, as a cohesive framework, is designed to deliver justice and satisfaction to citizens who seek redressal of their grievances before it. To meet such an objective, our efforts must not only be grounded in the sound application of constitutional and legal principles but also foster an environment of compassion and empathy. The absence of either of these cornerstones would prevent judicial institutions from properly performing their critical duties.

19. No judge or judgment of any court can be expected to do complete justice when it is inconsiderate towards the factual realities of a litigant and the vulnerabilities which they may be facing in approaching a court of law. Our decisions as participants in the legal process, from laying down the procedure that shall have to be faced by common citizens to the final judgment passed in any given case, must reflect the *ethos* of compassion, humanity, and understanding, which are essential for creating a fair and effective justice system.

20. There is no doubt that some action is required to be taken to inculcate and nurture an inherent sensitivity and discernment into the approach of members of the judiciary, as well as into the accompanying court procedures. Various steps, in this direction, have also been taken by the Constitutional Courts of this country, from time to time, on the judicial as well as administrative side. It seems, however, that the efforts thus far have not borne the fruit that was expected.

21. That being so, we are hesitant to undertake, at this stage, a fresh and unguided attempt to lay down any guidelines, without the benefit of a comprehensive understanding of the past endeavours of such nature undertaken by the different Constitutional and statutory bodies, the on-ground results of such efforts, and the varying scope of problems faced by victims and complainants in similarly sensitive cases. An attempt of this kind also should not be undertaken without the valuable opinions and suggestions of different domain experts, which, in our judicial experience, does not intuitively emerge out of litigative proceedings.

22. For this purpose, we request the National Judicial Academy, Bhopal, through its Director, Justice Aniruddha Bose, former Judge of this Court, to constitute a Committee of Experts. The Committee of Experts shall be presided over by Justice Bose as Chairperson and shall comprise four other domain experts as Members, which may include practitioners, academicians, and social workers.

23. We request the Committee of Experts to prepare a comprehensive report on the matter of 'Developing Guidelines to Inculcate Sensitivity and Compassion into Judges and Judicial Processes in the Context of Sexual Offences and other Vulnerable Cases'. The Committee shall consider the previous measures undertaken, whether on the judicial side or the administrative side, to achieve such goals, as well as the varying results seen on the ground through the implementation of such measures. Further, after taking into account such previous endeavours and the variety of on-ground experiences faced by different stakeholders across the judicial system, prepare comprehensive recommendations. These recommendations shall be in the form of 'Draft Guidelines for the Approach of Judges and the Judicial System When Dealing with Cases of Sexual Offences and other Similarly Sensitive Occurrences Involving Vulnerable Victims, Complainants, and/or Witnesses'.

- 24.** The Committee shall, while preparing the report, bear in mind the linguistic diversity of our nation. There are various examples of offensive words and expressions, the use of which would ordinarily constitute an offence under our penal laws, but they are openly spoken by members of our society in local dialects, ostensibly because of the absence of a clear understanding of the offensive nature of such saying. It shall be highly appreciated if the Committee, as a part of its report, is able to identify and compile such words/expressions, from different languages, so that they do not go unnoticed, and the complainants/victims are empowered to give a better and fuller narrative of the trauma undergone by them.
- 25.** While doing so, the Committee of Experts must remind itself that the primary beneficiaries of these Guidelines are the victims/complainants, majority of whom are children, women of tender age, and members of vulnerable sections of society. As such, the Committee shall ensure that the Draft Guidelines are devised in a manner so that they may be understood and utilized easily by such persons, irrespective of their background and means.
- 26.** To this end, we recommend that the Committee of Experts prepare, preferably the entire report, and in any case at least the draft guidelines, in simple language comprehensible to laypersons, whose interests the guidelines seek to protect. The guidelines, we expect, will not be loaded with heavy, complicated expressions borne from foreign languages and jurisdictions. They must be contextualised in the real and lived experience of the stakeholders in Indian judicial process, with direct reference to the *ethos*, values, and social fabric of our country.
- 27.** The Committee may even consider preparing translated versions of certain public-facing sections of the guidelines. The objective is to fully explain the various concepts to all readers, irrespective of linguistic and legal proficiency.
- 28.** We may also clarify that we, in no way, seek to restrict the Committee of Experts on the aspect of the volume of the draft guidelines. When an attempt is being made to explain and clarify the different concepts, rights, procedures, and best practices to be followed, the Committee must ensure that the report is comprehensive and exhaustive, including appropriate and adequate explanations and illustrations wherever necessary.
- 29.** The Committee of Experts shall be at liberty to seek the assistance of other experts on this matter, such as linguistics academicians, prosecutors, litigators, social scientists, and counsellors, as it deems necessary.
- 30.** The Registry of this Court is directed to forward a copy of this order to Justice Bose, and we request him to constitute the Committee of Experts, preferably within a period of two weeks. Counsel for the parties are permitted to file written submissions, charts, lists, and other documents, which may be of relevance to the Committee, with the Registry of this Court within two weeks. These documents, along with a complete set of the paperbooks of all these matters, shall be forwarded to the Committee, thereafter, for its consideration.
- 31.** The Chairperson and the Members of the Committee of Experts shall, for their valuable time and efforts, be paid such honorarium as may be determined by Justice Bose, for which necessary funds shall be provided by the Supreme Court of India.
- 32.** We request the Committee of Experts to complete its deliberations and submit a report to this Court, preferably within three months.

33. Having passed these directions, we are of the considered opinion that the *suo motu* writ petition regarding the order dated 17.03.2025, which we have already set aside, need not be kept open. As and when the Committee of Experts is able to furnish its report to this Court, the same would be taken up in a holistic manner, not specifically in the context of a single case. To that effect, the Registry is directed, upon receipt of the report from the Committee of Experts, to place the same before Hon'ble the Chief Justice of India on the administrative side for appropriate instructions.

34. Hence, in terms of the directions issued hereinabove, the instant *suo motu* case stands disposed of. Pending interlocutory applications, if any, also stand disposed of.

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