



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Misc Suspension of Sentence Application (Appeal)
No. 21/2023

Vijendra Singh

----Applicant

Versus

1. State of Rajasthan through Public Prosecutor
- 2.

----Respondents

For Applicant : Mr. Pradeep Shah

For Respondent No.1 : Mr. Nihalsingh Rathod, Special P.P.
Ms. Disha Wadekar, Asstt. Special P.P.
Ms. Sukanya
(All through VC)

For Respondent No.2 : Mr. Shreyansh Mardiya

**HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

Order

06/07/2023

This suspension of sentence application has been preferred on behalf of the applicant-appellant, who has been convicted and sentenced by the Special Judge, POCSO Act Cases and the Commissions for Protection of Child Rights Act, 2005 Cases, Bikaner (hereinafter to be referred as 'the trial court') in Sessions Case No.68/2018 (CIS No.54/2018) CNR No.RJBK150001222018 vide judgment dated 08.10.2021. The applicant-applicant has been sentenced as under :-



Offences U/S	Sentence	Fine (In Rs.)	Sentence (in default of payment of fine)
363 IPC	4 Years' Rigorous Imprisonment	5,000/-	3 Months' Additional Rigorous Imprisonment
366 IPC	5 Years' Rigorous Imprisonment	5,000/-	3 Months' Additional Rigorous Imprisonment
376 (2)(n) IPC read with 3(2)(v) of SC/ST Act, 1989	Life Imprisonment	10,000/-	6 Months' Additional Rigorous Imprisonment
305 IPC	6 Years' Rigorous Imprisonment	10,000/-	6 Months' Additional Rigorous Imprisonment
3(1)(B)(i) of SC/ST Act, 1989	2 Years' Rigorous Imprisonment	5,000/-	1 Month's Additional Rigorous Imprisonment

All the sentences were ordered to run concurrently.

Learned counsel for the applicant-appellant has submitted that the trial court has grossly erred in convicting and sentencing the accused applicant-appellant vide impugned judgment. It is argued that there is no material available on record to substantiate the fact that the accused applicant-appellant committed any crime with the deceased on the ground that she belonged to scheduled caste community and thus, the finding recorded by the trial court against the accused applicant-appellant for committing offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not tenable in the eye of law.



Learned counsel for the applicant-appellant has submitted that testimony of prosecution witness viz. (PW-1), who happened to be the father of the deceased, is simply based on hearsay evidence and is not corroborated by any independent witness against the accused applicant-appellant. It is also submitted that the prosecution witnesses viz. Mst. Sakina Bano (PW-2), Hadman Singh (PW-3), Omprakash (PW-4), Ms. Manju (PW-5), Dr. Rajendra Kumar (PW-7), Manju (PW-9), Ms. Leena Gupta (PW-12), Ms. Chandrakala (PW-13) and Mahaveer (PW-14), who were attached with the educational institution, have not supported the prosecution story and turned hostile as well as nothing concrete could be elucidated in their cross-examination. It is further submitted that the prosecution case rests on the testimony of (PW-11) Ms. Parmeshwari, however, she has also not completely supported the prosecution story.

Learned counsel for the applicant-appellant has submitted that the applicant-appellant is under incarceration since 31.03.2016 and there is no likelihood that the appeal filed on his behalf will be heard in near future, therefore, the sentence awarded to him by the trial court may kindly be suspended.

Per contra, learned Special Public Prosecutor appearing on behalf of respondent No.1 as well as learned counsel appearing on behalf of respondent No.2 have vehemently opposed the prayer of the applicant-appellant for suspending his sentence.

It is argued by learned Special Public Prosecutor that the role and motive of the accused applicant-appellant have been



established beyond reasonable doubt by the prosecution by producing cogent and reliable evidence. It is also submitted that it is wrong to contend that the accused applicant-appellant has falsely been implicated in this case. It is further submitted that from the material available on record, it can be concluded that the accused applicant-appellant committed crime with the deceased having full knowledge that she belonged to scheduled caste community. It is also submitted that the trial court has rightly recorded the conviction of the accused applicant-appellant and also awarded punishment in accordance with law. It is also submitted that looking to the fact that the accused applicant-appellant committed heinous crime with a minor girl who belonged to the scheduled caste community, his sentence awarded by the trial court may not be suspended.

Heard learned counsel for the parties on suspension of sentence application and carefully scrutinized the material available on record.

It is noticed that the accused applicant-appellant was the Physical Training Instructor in the institution, where the deceased was living in the hostel. It is also to be noticed that the allegation against the accused applicant-appellant is to the effect that he sexually assaulted the deceased, due to which she committed suicide.

Having considered the totality of the facts and circumstances of the case particularly the fact that the allegations levelled against the accused applicant-appellant are serious and after carefully scrutinizing the evidence available on record, we are not





inclined to suspend the substantive sentence awarded to the accused applicant-appellant.

Accordingly, this application for suspension of sentence is rejected.



(RAJENDRA PRAKASH SONI),J

(VIJAY BISHNOI),J

Abhishek Kumar
S.No.34