

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc Suspension Of Sentence Application (Appeal)
No. 1917/2023

In

S.B. Criminal Appeal No.3338/2023

Opendra Singh @ Upendra Singh S/o Mohan Singh, R/o Bandali
Dhani Tan Rasnali, Thana Bansoor, District Alwar, Rajasthan.
(Presently Accused-Appellant Is Confined In District Jail Alwar,
District Alwar, Rajasthan)

-----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Roshan Lal Saini S/o Matadeen Saini, R/o Bandali Dhani
Tan Rasnali Police Thana Bansoor District Bhiwari
Rajasthan

-----Respondents

For Petitioner(s)	:	Mr. Ravi Shankar Sharma Mr. Pawan Sharma
For Respondent(s)	:	Mr. Amit Punia, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

09/10/2024

1. Heard learned counsel for the applicant-appellant and
learned State counsel on the application for suspension of
execution of sentence.
2. The applicant-appellant herein has been convicted for the
offences punishable under Sections 363 & 506 of IPC and Section
3/4 of Protection of Children from Sexual Offence Act, 2012 vide
judgment dated 12.09.2023 passed by learned Special Judge,
Protection of Children from Sexual Offences Act, 2012 & Child

Right Protection Commission Act, 2005, No.2, Alwar (Raj.) in Sessions Case No.17/2021 (118/2020) and has been sentenced to maximum punishment of twenty years.

3. Learned counsel for the appellant-applicant submits that appellant-applicant has wrongly been convicted by the learned trial Court. Counsel submits that learned trial Court has failed to appreciate the evidence available on record in correct perspective. Counsel submits that at initially, in FIR there was allegations against three persons of committing anal intercourse with the victim but later on, victim changed his version and levelled allegations only against the appellant-applicant of committing anal intercourse. Counsel submits that when in medical examination, no evidence of anal intercourse was found, victim changed his version in the Court and levelled allegation of oral sex against the appellant. Counsel submits that it is evident from the testimony of the complainant that there is land dispute between the appellant and the complainant and it was admitted by the complainant that his land is in possession of the appellant and appellant is making pressure upon him to compromise the matter. Counsel submits that allegations of the victim are not supported by medical evidence as no sign of sexual assault was found on the body of the victim. Counsel submits that during trial, appellant was on bail and he did not misuse the liberty of bail. Counsel further submits that appellant has suffered incarceration of 1 year and 7 months till date and there is no immediate prospect of this appeal being heard and disposed of in near future.

4. Learned State counsel opposes the submissions made by counsel for the appellant. He submits that there is allegation against the appellant of anal intercourse with the victim. However, he fairly conceded the fact that in medical examination, no sign of anal intercourse was found. He further submits that complainant of this case has duly been informed about this application for suspension of execution of sentence, but despite information, no one has put in appearance on behalf of the complainant.

5. Upon a consideration of the arguments advanced on behalf of counsel for the appellant and learned State Counsel and having regard to the facts and circumstances as available on the record and especially the fact that it appears from the evidence that different statements have been made by the victim against the appellant at different stages of trial; allegations of the victim are not corroborated by the medical evidence; admission of the complainant with regard to the land dispute; during trial appellant was on bail and he did not misuse the liberty of bail; appellant has suffered incarceration of 1 year and 7 months including remission and there is no immediate prospect of this appeal being heard and disposed of in near future, this Court is of the opinion that the appellant has available to him strong grounds to assail the impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentences awarded to the applicant-appellant during pendency of the instant appeal.

6. Accordingly, the application for suspension of sentence filed under Section 389 of Cr.PC is allowed and it is ordered that the

sentences passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 & Child Right Protection Commission Act, 2005, No.2, Alwar (Raj.) vide judgment dated 12.09.2023 in Sessions Case No.17/2021 (118/2020) against the appellant-applicant **Opendra Singh @ Upendra Singh S/o Mohan Singh** shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he execute a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance in this court on 11.11.2024 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
 2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.
 3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.
7. The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to

pendency and disposal of cases in the trial court. In case the said accused applicant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

(ANIL KUMAR UPMAN),J