

Rashpal Singh Vs. State of H.P.

Cr. Appeal No. 184 of 2024

23.9.2025 Present: Mr. Vijender Katoch, Advocate, for the appellant.

Mr. Mohinder Zharaick, Addl. A.G. with Mr. Rohit Sharma, Dy. A.G., for the respondent/State.

Cr. M.P. No. 3935 of 2025

In pursuance of the directions issued by this Court on 18.9.2025, learned Addl. Advocate General has placed on record the custody certificate.

2. By way of present application, indulgence of this Court has been sought to suspend the order of sentence, dated 22.12.2023, passed by the learned Addl. Sessions Judge, Fast Track Special Court, POCSO, Kangra at Dharamshala, District Kangra, H.P. (hereinafter referred to as 'the trial Court').

3. Applicant Rashpal Singh has filed the appeal, against the judgment of conviction, and order of sentence, dated

22.12.2023, passed by the learned trial Court.

4. Vide judgment of conviction and order of sentence, dated 22.12.2023, as referred to above, the learned trial Court has convicted the applicant, for the commission of offence, punishable under Sections 354 Indian Penal Code and Section 8 of the Prevention of Children from Sexual Offences Act (hereinafter referred to as ‘the POCSO Act’), and sentenced him, in the following manner:

Sr. Offence No. under Section	Sentence	Default Sentence
1. 354 IPC	Simple imprisonment for a period of one year and to pay a fine of Rs. 1000/-	Simple imprisonment for three months
2. 8 POCSO Act	Simple imprisonment for a period of three months and to pay a fine of Rs. 3000/-	Simple imprisonment for a period of six months

5. Both the sentences have been ordered to run concurrently.

6. The appeal preferred by the applicant has been admitted by this Court, on 26.4.2024.

7. The judgment of conviction has mainly been assailed on the ground that prosecution could not prove the age of the child victim by leading cogent and convincing evidence.

8. Apart from this, judgment of conviction has been assailed on the ground that the evidence, so adduced, by the prosecution, has not been properly considered by the learned trial Court and the judgment of conviction is stated to be result of non-appreciation of the material evidence, on record.

9. From the grounds of appeal, this Court is of the view that at this stage, it cannot be said that the applicant is having no case in his favour. Moreover, the sentence, which has been imposed upon the applicant, falls within the definition of 'fixed term sentence'.

10. According to the decisions of Hon'ble Supreme Court in '**Bhagwan Rama Shinde Gosai and Others Vs. State of Gujarat**', reported in (1994) 4 SCC 421 and in '**Bhupatji Sartajji Jabraji Thakor Vs. State of Gujarat**', reported in '2024 SCC OnLine SC 3320', the sentence, imposed by learned trial Court, which falls within the definition of "fixed term sentence", can be suspended. Relevant paragraph 3 of the judgment in Bhagwan Rama Shinde Gosai's case (supra) is reproduced, as under:-

"3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such

cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

11. Relevant paragraph 7 of the judgment in Bhupatji Sartajji Jabraji Thakor’s case (supra), is reproduced, as under:-

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of reappreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.”

12. As per the custody certificate, the applicant has undergone one year and 14 days of imprisonment, as on 22.9.2025. Considering the said fact and the law laid down by Hon'ble Supreme Court, in the aforesaid cases, application, under consideration, is allowed and the order of sentence dated 22.12.2023 passed by the learned trial Court, is ordered to be suspended, during the pendency of the appeal, and the applicant, who is presently lodged in judicial custody in Lala Lajpat Rai District & Air Correctional Home Dharamshala, District Kangra, H.P., is ordered to be released on bail, in this case, subject to the following conditions:

(i) That the applicant shall furnish personal bond in the sum of Rs.30,000/-, along with one surety of the like amount, to the satisfaction of the learned trial Court, within a period of four weeks from today, with an undertaking that he will surrender before the learned trial Court to serve the remainder substantive sentence, in case

of ultimate dismissal of the present appeal, by this Court;

(ii) The applicant shall deposit the fine amount, if any, within the aforesaid period;

(iii) The applicant shall not leave the territory of India without the prior permission of the Court.

13. Application is, thus, disposed of.

14. A copy of this order be sent to the learned trial Court, with a direction that the report of compliance of this order be submitted to this Court.

(Virender Singh)
Judge

September 23, 2025
(kalpana)

KALPANA

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