

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc 2nd Suspension Of Sentence Application No.
1906/2025

in

S.B. Criminal Appeal No. 2108/2022

Shiv S/o Ganga, Resident Of Kamata Bujurg Police Station
Paniyara District Maharajganj Uttarpradesh, At Present Tenant,
House Of Kanwarpal Gurjar, Harchandpur, Bhiwadi, Police Station
Bhiwadi, District Alwar (Raj.). (At Present Confined In Central
Jail, Alwar)

-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

-----Respondent

For Petitioner(s) : Mr. Kapil Gupta

For Respondent(s) : Mr. Rajendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

10/03/2026

1. Instant second application for suspension of sentence is preferred aggrieved from order of conviction and sentence dated 16.09.2022 in Sessions Case No.57/2020 passed by learned Special Judge (POCSO Act, Cases) No.1, Alwar whereby appellant was convicted for charge under Sections 363, 366, 376AB IPC and Section 5(m)/6 POCSO Act and Section 3(2)(va) SC/ST (POA) Act.
2. Learned counsel for the appellant while relying upon grounds of appeal submitted that without observing principle of law learned trial court has arrived at a conclusion of conviction. He further submitted that learned trial court has overlooked material

contradictions and discrepancies, which goes to root of the matter. He further submitted that the entire case of prosecution rests on testimony of interested witness and no independent witness was examined to corroborate the story of prosecution.

3. Learned counsel for petitioner submits that the father of victim has not supported the case of prosecution, rather he turned hostile. He further referred the statement of PW-1 victim and submitted that her statement is not sufficient to draw a conclusion that present petitioner has committed any sexual offense with her. He further referred the questions and submitted that the trial court has suggested certain questions which were answered in affirmative by victim and on the basis of the affirmation present petitioner was convicted. He also submitted that present petitioner is in custody for almost seven years and there is no likelihood that the appeal will be taken up for hearing.

4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted custody certificate and same is taken on record. He also informed that complainant victim has already been informed.

5. Heard learned counsel for appellant and learned Public Prosecutor. Perused the record.

6. First SOS application of present petitioner was considered by this court on 20.07.2023 and while dismissing the first SOS application, we have observed as under:

"As per custody certificate submitted by learned Public Prosecutor, appellant has already remained in custody for more than 3 years and 6 months and even during trial he remained in custody.

PW3 informant-complainant who is father of victim has turned hostile.

Similarly, the person named as "first to know" the incident as named in Ex.P4 was examined as PW2 and he also turned hostile. In report Ex.P4, the name of victim, name of present appellant and also the fact that sexual assault was committed with victim were also mentioned. When we look at statement under Section 164 Cr.P.C. Ex.P1 then the victim was examined on 03.03.2020 wherein she specifically referred certain act and this victim was examined as PW1 before the trial court. Therein, initially she admitted that she was kissed by appellant. Thereafter, she admitted that her cloths were removed firstly she stated that appellant had inserted his finger in her mouth then she admitted insertion of private part of accused in her mouth. The sequence of answer given by PW1 clearly indicated that victim was 12 years of age and examined by a system in question answer format. Moreover, when asked description about the incident then at one point of time she just kept mum and did not answered the question.

In this case, one of the act which is quite noticeable is that admission of PW2 to enter into compromise with appellant and also the father of victim turned hostile but victim remained firm and even she could not speak about the entire incident.

Having considered the entirety of evidence, I am of considered view that in case like this, we all are concerned about sexual abuse of children by perpetrators and this is a fit case to opine that just to stop abuse of children from sexual exploitation etc. the POCSO was enacted by the Parliament of India."

7. No doubt about the fact that father of victim has turned hostile and not supported the case of prosecution, rather his admission indicate that a compromise between present petitioner and him. The victim has supported the case of prosecution and we have considered her evidence which was recorded by learned

Special Judge, POCSO Case No. 1, Alwar on 24.09.2021. The question answers clearly indicate that the victim has identified the present petitioner accused. The material on record also indicate that victim was examined under section 164 Cr.P.C. and her statement was recorded by learned Additional Chief Judicial Magistrate No. 1, Tijara. The statement of victim were reproduced by the trial court in its judgment and we have taken note of every circumstance as referred by learned counsel for the petitioner.

8. The age of victim is less than 12 years and the father of victim has turned hostile and he entered into a compromise with present petitioner. The petitioner is awarded sentence of 20 years and petitioner has undergone more than 6 years, 8 months and 2 days.

9. Considering the gravity and object behind the POCSO Act, this is not a fit case to enlarge petitioner accused on bail.

10. In view of aforesaid, present case is not a fit case wherein appellant be enlarged on bail. Hence, second application for suspension of sentence is hereby dismissed.

(ASHOK KUMAR JAIN),J