
(2023) 08 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Miscellaneous 2nd Suspension Of Sentence Application
(Appeal) No. 164 Of 2023

Bhupendra @ Bhopa Angar

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Citation : (2023) 08 RAJ CK 0043

Hon'ble Judges : Vijay Bishnoi, J;Rajendra Prakash Soni, J

Bench : Division Bench

Advocate : Jagatveer Singh Deora, Anil Joshi, Rajat Chhaparwal

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties on the application for suspension of sentence.
2. Learned counsel for the appellant-applicant has submitted that the trial court has grossly erred in convicting and sentencing the appellant-applicant vide impugned judgment.
3. It is submitted that the prosecution has failed to prove the charges levelled against the appellant-applicant with cogent and reliable evidence. It is further submitted that complaint in respect of the alleged offences was lodged with a delay of 13 days and no satisfactory explanation for the same has been provided.
4. Learned counsel has argued that though, as per the statement of Maganlal (PW-6) and Prabhu Lal (PW-7), they informed father of the victim about the incident and have also disclosed identity of the appellant-applicant on the very same day of the alleged incident, but the FIR has been lodged with a delay of 13 days, which itself is sufficient to assume that the appellant-applicant was not involved in the commission of crime and he has falsely been implicated in this case. It is argued that from the evidence of victim PW-1, it cannot be concluded that the appellant had sexually assaulted her. Learned counsel for the appellant-

applicant while drawing attention of this Court towards the statement of PW-4 - father of the victim has submitted that he has admitted that as the appellant-applicant did not agree to pay amount of Rs.50,000/-, he has filed this case.

5. Learned counsel for the appellant-applicant has further submitted that the appellant-applicant is in custody since 01.12.2016 and there is every likelihood that hearing of the appeal preferred on his behalf is likely to take time. It is, thus, prayed that the sentence awarded to the appellant-applicant by the trial court may be suspended.

6. Learned GA-cum-AAG has opposed the instant application for suspension of sentence.

7. Having considered the totality of facts and circumstances of the case, without expressing any opinion on the merits of the case, we consider it just and proper to suspend the substantive sentences awarded to the appellant-applicant.

8. Accordingly, this application for suspension of sentence filed under Sec.389 Cr.P.C. is allowed and it is ordered that the sentences passed by the Special Judge, POCSO Act Cases, No.2, Udaipur vide judgment dated 21.05.2019 in Sessions Case No.06/2018 against appellant-applicant - Bhupendra @ Bhopa Angari S/o Sh. Khuma Ram Angari shall remain suspended till final disposal of the appeal, provided he executes 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 21.09.2023 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-appellant 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, they will give in writing their changed address to the trial Court.

9. The learned trial Court shall keep the record of attendance of the accused-applicant-appellant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant-appellant 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-appellant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.