

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Misc. Application for Suspension of Sentence
No.1133/2021

In

S.B. Criminal Appeal No. 1340/2021

Mahendra Singh S/o Ramsahai, Resident Of Rawanjna Dungar,
Police Station Rawanjna Dungar, District Sawaimadhopur
(Rajasthan)

(At Present Confined In District Jail-Bharatpur)

----Accused-Appellant

Versus

State Of Rajasthan, Through P.P.

-----Respondent

For Appellant(s)	:	Mr. Tarun Jain
For Respondent(s)	:	Mr. Ganesh Saini, PP

HON'BLE MR. JUSTICE MANOJ KUMAR VYAS

Order

30/11/2021

Heard on application for suspension of sentence.

The appellant has filed the appeal along with application for suspension of sentence.

This appeal has been preferred against the judgment of conviction and sentence dated 17.08.2021 passed by the Special Court, Prevention of Children from Sexual Offences Act, 2012, Sawai Madhopur in Sessions Case No.27/2020, by which the appellant has been convicted under Sections 457, 363, 366, 376(3) of IPC and Section 5/6 of the POCSO Act and sentenced to maximum term of twenty years.

It has been submitted by learned counsel for the appellant that the appellant has been falsely implicated in the case. There is no evidence on record to connect the accused-appellant with the crime. Learned trial court has erred in convicting and sentencing the accused. Material witnesses of the case have turned hostile. P.W.13 (prosecutrix), P.W. 10 (brother of the prosecutrix), P.W.11 (mother of the prosecutrix) and P.W.12 (sister of the prosecutrix), all have turned hostile. They have not supported the prosecution version.

It is further submitted that the conviction has been made solely on the basis of medical evidence and DNA report but Hon'ble Gujarat High Court has held in the case of *Premjibhai Bachubhai Khasiya v. State of Gujarat and anr.* (2009(2) GLR 1268) that science of DNA is at developing stage and cannot be considered as conclusive proof of paternity. Such report cannot be accepted in isolation i.e. as sole piece of evidence to record conviction in rape case. Positive report can be of great significance where there is supporting evidence. Hon'ble Gujarat High Court has relied upon the judgment of Hon'ble Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005)5 SCC 294.

It has further been submitted that during trial, the appellant was on bail and now, he is in custody since 17.08.2021. He has already served about one year of sentence. Hearing of appeal may take long time.

Learned Public Prosecutor has opposed the application for suspension of sentence.

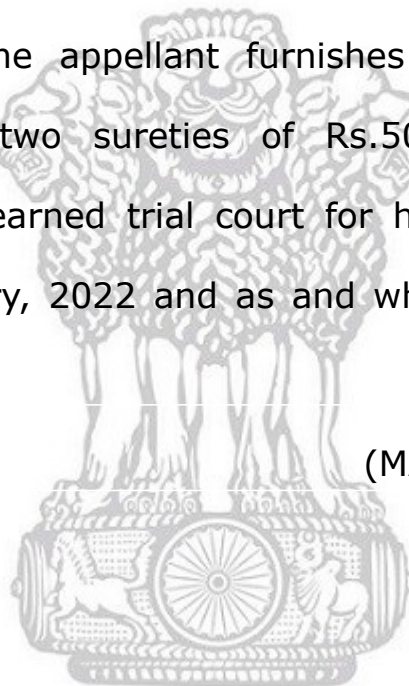
Heard learned counsel for the parties and scanned the evidence available on record carefully.

Taking into consideration the submissions of learned counsel for the appellant, overall facts and circumstances of the case but without commenting upon detailed merits of the case, this Court deems just and proper to allow the application for suspension of sentence.

Accordingly, the application for suspension of sentence is allowed and it is ordered that the sentence awarded to accused-appellant **Mahendra Singh S/o Ramsahai** shall remain suspended till disposal of this criminal appeal and he be released on bail, provided the appellant furnishes a personal bond of Rs.1,00,000/- and two sureties of Rs.50,000/- each to the satisfaction of the learned trial court for his appearance in this Court on 03rd January, 2022 and as and when called upon to do so.

(MANOJ KUMAR VYAS),J

Aks/Hemant/-12



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