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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CRL.A. 780/2024, CRL.M.(BAIL) 1436/2024, CRL.M.(BAIL)  
1235/2025, CRL.M.(BAIL) 1709/2025  
SURENDER & ANR. ....Appellants

Through: Mr. A.K. Mishra, Advocate  
versus  
STATE OF NCT OF DELHI .....Respondent  
Through: Mr. Utkarsh, APP for the State with  
SI Geetam Singh, P.S. Badarpur.

**CORAM:**  
**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

% **ORDER**  
**22.05.2026**

**CRL.M.(BAIL) 2063/2025 & CRL.M.(BAIL) 901/2026**

1. These applications under Section 430 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 have been filed on behalf of the first accused/A1 in Sessions Case No. 161/2015 on the file of Additional Sessions Judge – 01 (Designated Special Court under PoCSO Act, 2012), South-East, Saket Courts, Delhi seeking suspension of sentence during pendency of the appeal. As per the impugned judgment, the appellant/ accused has been found guilty of the offences punishable under Sections 342, 376, 506 read with Section 34 of



the Indian Penal Code, 1860 (IPC) and Sections 6 and 17 of the PoCSO Act. *Vide* order on sentence dated 19.07.2024, he has been sentenced to varying terms of imprisonment for the aforesaid offences. The sentences have been directed to run concurrently. Therefore, the maximum sentence he will have to undergo is for a period of 10 years.

2. It is submitted by the learned counsel for the appellant/accused that out of 10 years, he has served nearly 4 years. He further submits that according to the prosecutrix, the incident of rape had taken place inside one of the rooms in the house of the appellant/A1. However, no site plan has been prepared. Yet another allegation is that when the appellant/A1 was in the act of raping her, the volume of the tape recorder/deck being played was increased. However, the said tape recorder/deck was not seized or recovered. It is also submitted by the learned counsel that though the mobile of the appellant/accused was recovered and sent for FSL, no objectionable video could be recovered. It is further



submitted that the testimony of the victim is also not of sterling quality. She had also refused her medical examination. Hence, the materials on record are unsatisfactory. Therefore, the sentence of the appellant/accused is liable to be suspended.

3. The applications are opposed by the learned Additional Public Prosecutor for the respondent/ State who submits that this is the second and third application respectively seeking suspension of sentence filed by the appellant and their earlier applications were dismissed. In the facts and circumstances, this is not a fit case in which the sentence of the appellant/accused is liable to be suspended.

4. Heard both sides.

5. It is well settled that while considering an application for suspension of sentence, the appellate court is only to examine if there is such patent infirmity in the order of conviction that renders it prima facie erroneous. Where there is evidence that has been considered by the trial court and conclusions arrived at, the



appellate court, while exercising its power for suspension of sentence, cannot re-assess or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail. (See **Preet Pal Singh vs State of U.P., (2020) 8 SCC 645**)

6. The question whether the testimony of the victim is reliable or creditworthy or whether the material on record establishes the prosecution case beyond reasonable doubt are matters which need to be considered by this Court when the appeal is heard on merits. Medical evidence, that is admissible under Section 45 of the Evidence Act, is opinion evidence which can only corroborate the testimony of the victim. Even assuming that there is no internal examination that is no ground to disbelieve the prosecution case.

7. No patent infirmity seen in the impugned judgment. Hence, the applications seeking suspension of sentence is dismissed.



**CRL.A. 780/2024**

8. List on 04.11.2026.

**CHANDRASEKHARAN SUDHA, J**

**MAY 22, 2026**

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