

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc. Suspension of Sentence Application
No.397/2026

In

S.B. Criminal Appeal (Sb) No. 438/2026

1. Hasam Khan S/o Noor Khan, Aged About 67 Years, R/o Bansanpeer Jooni, Ps Sadar, Jaisalmer, Current Chak 11 Skl, Sarad Arjuna, Ps Mohangarh, District Jaisalmer, Raj. (At Present Lodged In Central Jail, Jodhpur)
2. Ajeez Khan S/o Noor Khan, Aged About 46 Years, R/o Baanpeer Jooni, Ps Sadar, Distt. Jaisalmer, Raj. (At Present Lodged In Central Jail, Jodhpur)

----Appellants

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Appellant(s)	:	Mr. Gaurav Maru
For Respondent(s)	:	Mr. NS Chandawat, PP

HON'BLE MR. JUSTICE FARJAND ALI

Order

25/02/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicants in the matter of judgment dated 19.02.2026 passed by the learned Additional Sessions Judge, Jaisalmer in Sessions Case No.23/2022 whereby they were convicted and sentenced to suffer maximum ten years' SI along with a fine of Rs.5,000/- under Section 459 of IPC and and lesser punishment for the other offences under Sections 458, 341, 323/34, 325/34, 394 and 397 of IPC.

2. It is contended by the learned counsel for the appellants that the learned trial Judge has not appreciated the correct, legal and factual aspects of the matter and thus, reached at an erroneous conclusion of guilt, therefore, the same is required to be appreciated again by this court being the first appellate Court. Hearing of the appeal is likely to take long time, therefore, the application for suspension of sentence may be granted.
3. Per contra, learned public prosecutor has vehemently opposed the prayer made by learned counsel for the accused-applicants for releasing the appellant on application for suspension of sentence.
4. Heard learned counsel for the parties and perused the material available on record.
5. There exists a fine yet significant distinction between the grant of bail under Section 439 of the Code of Criminal Procedure, 1973, and the suspension of sentence under Section 389 CrPC. While the power exercised under Section 439 CrPC is essentially discretionary in nature and operates at the pre-conviction stage, the jurisdiction under Section 389 CrPC, though also discretionary, is qualitatively different and operates post-conviction. Under Section 389 CrPC, the appellate court is vested with a distinct authority; however, the core consideration before the appellate forum must necessarily be whether the judgment of conviction and the consequent order of sentence are sustainable in the eyes of law.

6. It is trite that the presumption of innocence, which enures in favour of an accused, comes to an end upon conviction. Consequently, while considering an application under Section 389 CrPC, the appellate court is required to examine the grounds raised in the appeal, and for such purpose, the oral and documentary evidence must be looked into. Where, upon appreciation of evidence, it appears that the conclusions drawn by the trial court may be erroneous, and where logical, legal and sustainable arguments are advanced assailing the findings, disclosing a strong and arguable case, the appellate court is duty-bound to consider such contentions.
7. Where the sustainability of the conviction itself becomes debatable, and where the grounds raised in appeal, if adjudicated in favour of the appellant, disclose a real and substantial possibility of success, and where, prima facie, it appears that the conviction may be reversed and the appellant may be acquitted, the appellate court ought to suspend the sentence pending disposal of the appeal.
8. Such discretion deserves to be exercised with greater circumspection in cases where the appellate forum has sufficient reason to believe that the appeal is not likely to be taken up for hearing in the near future. In such circumstances, the court is required to assess whether the grounds raised are not merely ornamental but possess real substance and force, for the simple reason that if the appeal ultimately succeeds, the period of incarceration already undergone cannot be undone or restituted. In such a

situation, the court should incline towards suspending the sentence.

9. At the same time, it is well settled that the appellate court is not required to record any definitive or conclusive finding, as doing so would amount to forming a pre-determined opinion on the merits of the appeal at an initial stage, without affording a full hearing on the appeal itself. It is sufficient if the court merely indicates that the grounds raised are prima facie appreciable, logical and legally tenable, that they are founded upon settled principles of law, and that there appears to be improper evaluation or assessment of evidence, or non-consideration / disregard of relevant statutory provisions.
10. It is also to be borne in mind that in several cases, the conviction may ultimately be converted to a lesser offence, or the propriety of the sentence imposed by the trial court, being within its discretionary domain may also require reconsideration, particularly whether an adequate and proportionate sentence was imposed after due hearing on the point of sentence. These aspects, too, are open to re-examination at the appellate stage.
11. An appeal, in its true sense, is an extension of the trial, for the reason that additional evidence may be taken, and the entire body of evidence is subject to re-appreciation on both factual and legal parameters. At this stage, the appellate court is empowered to set aside the conviction, modify it, remand the matter, or maintain the judgment, as the case may be.

12. In the High Court, thousands of criminal appeals have remained pending for the last 20–30 years, including jail appeals, where even the likelihood of early hearing does not appear forthcoming. In such matters, instead of taking an irreversible risk, the court must proceed on the safer side by placing paramount importance on human dignity and personal liberty.
13. In the present case, the submission that whether the house breaking was lurking is a question to ponder over. The appellant has a serious and arguable case in his favour. The further question regarding justness of the order of sentence is also requires further appreciation. All the issues raised are vital in nature and carry sufficient force and substance, such that if they are adjudicated in favour of the appellant, the possibility of acquittal cannot be ruled out. The grounds raised are appreciable and necessitate definitive adjudication, which would require meticulous examination and re-appreciation of evidence, and there exists a reasonable possibility that such exercise may ultimately ensure to the benefit of the appellants.
14. Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentence passed by learned trial court, the details of which are provided in the first para of this order, against the appellant-applicants named above shall remain suspended till final disposal of the aforesaid appeal and they shall be released on bail provided each of them 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 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That they will appear before the trial Court in the month of January of every year till the appeal is decided.
 2. That if the applicants change the place of residence, they will give in writing their changed address to the trial Court as well as to the counsel in the High Court.
 3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.
15. The learned trial Court shall keep the record of attendance of the accused-applicants in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant 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 applicants do not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

(FARJAND ALI),J