

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

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 649/2026

Umesh S/o Shri Ganeshlal Vyas, Aged About 32 Years, Resident
Of Garawala, Police Station Dungla, District Chittorgarh,
Rajasthan. (Presently Lodged In District Jail Rajsamand)

----Petitioner

Versus

State Of Rajasthan, Pp

----Respondent

For Petitioner(s)	:	Mr. Prakash Banjara Mr. Bharat Gurjar
For Respondent(s)	:	Mr. NS Chandawat, PP

HON'BLE MR. JUSTICE FARJAND ALI
Order

29/04/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicant in the matter of judgment dated 27.03.2026 passed by the learned Special Judge, NDPS Act Cases, Rajsamand in Sessions Case No.32/2022 whereby he was convicted and sentenced to suffer 13 years' RI under Section 8/15 of NDPS Act along with fine and default sentence.
2. Learned counsel for the appellant submits that the trial court failed to properly appreciate the legal and factual aspects, resulting in an erroneous finding of guilt. Being the first appellate court, this Court may reappraise the evidence. It is further submitted that the appellant remained on bail during trial without misuse of liberty, and as the appeal will take time for disposal, the sentence deserves to be suspended.

3. Learned Public Prosecutor has opposed the prayer for suspension of sentence.
4. Heard learned counsel for the parties and perused the material available on record.
5. The distinction between grant of bail under Section 439 CrPC (corresponding to Section 483 BNSS) and suspension of sentence under Section 389 CrPC (corresponding to Section 430 BNSS) is well settled. While the former operates at the pre-conviction stage, the latter comes into play post-conviction and requires the appellate court to assess, prima facie, the sustainability of the conviction and sentence under challenge.
6. Upon conviction, the presumption of innocence stands displaced; however, while considering suspension of sentence, the appellate court is required to evaluate whether the grounds raised in appeal disclose a substantial and arguable case. If the material on record suggests that the findings of the trial court may be debatable, the discretion under Section 389 CrPC (corresponding to Section 430 BNSS) can be justifiably invoked. Where the appeal raises issues which, on prima facie consideration, indicate a reasonable possibility of success, including reversal or modification of conviction, the sentence may be suspended pending adjudication.
7. This Court is guided by the enunciation of law by the Hon'ble Supreme Court in ***Muna Bisoi v. State of Odisha (February 16, 2026)***, wherein it has been held that prolonged pendency of criminal appeals, not attributable to

the convict, constitutes a valid ground for suspension of sentence. Reliance has also been placed on **Kashmira Singh v. State of Punjab (1977) 4 SCC 291**, wherein the Supreme Court deprecated continued incarceration of convicts for long periods during pendency of appeals, observing that such practice would amount to a travesty of justice.

8. It is equally settled that while considering such application, the appellate court is not required to record conclusive findings on merits, as that would prejudice the final adjudication. A prima facie satisfaction regarding the arguability and substance of the grounds would suffice. The appellate jurisdiction being a continuation of trial, the entire evidence remains open to re-appreciation. The court may ultimately affirm, modify, or set aside the conviction, or alter the sentence, depending upon the outcome of such re-evaluation.
9. Additionally, even where conviction is sustained, the nature of offence or quantum of sentence may warrant reconsideration at the appellate stage, which further justifies a liberal approach in appropriate cases. This Court cannot lose sight of the fact that it is burdened with a large number of pending criminal appeals, and the likelihood of their early disposal remains uncertain. In such circumstances, continued incarceration, despite arguable grounds in appeal, would not be justified, particularly when delay is not attributable to the appellant.

10. Upon a meticulous scrutiny of the record, it emerges that the seizing officer, Udai Singh (examined as PW-4 Bhanwar Lal), in response to a specific query regarding compliance with mandatory statutory safeguards, unequivocally admitted that prior to conducting the search, no notice under Section 50 of the NDPS Act was served upon the accused. This admission goes to the root of the matter and reflects a clear infraction of a mandatory procedural requirement. It is well settled that non-compliance with Section 50 vitiates the recovery, as authoritatively laid down by the Hon'ble Supreme Court in ***Vijaysinh Chandubha Jadeja v. State of Gujarat (AIR 2011 SC 77)***.
11. Further, with respect to the integrity of the sampling process, the record indicates that although samples were drawn at the time of seizure, the same were dispatched to the Forensic Science Laboratory after an unexplained delay of seventeen days. The absence of any cogent explanation regarding the custody and handling of the samples during this intervening period casts a serious doubt on the sanctity of the chain of custody. Such a lapse assumes greater significance when viewed in light of the allegation of prior enmity between the seizing officer and the accused, thereby raising a reasonable apprehension regarding the possibility of tampering or mala fide conduct.
12. The law governing cases under the NDPS Act mandates strict adherence to procedural safeguards, particularly in relation to search, seizure, sampling, and forwarding of samples for chemical examination. The evidentiary value of the FSL

report is contingent upon an unbroken and legally compliant chain of custody. It is also a settled proposition that for the sampling process to attain legal sanctity, it ought to be verified by a Magistrate prior to being forwarded for analysis. In the absence of such compliance, the FSL report loses its evidentiary worth and cannot form the basis of conviction. Any breach in this regard renders the entire prosecution case vulnerable, as the foundational evidence itself becomes unreliable. Additionally, considering the prolonged incarceration of the appellant, who has remained in custody for more than four years, coupled with the fact that the appeal stands admitted and is not likely to be heard in the near future, the principles enunciated by the Hon'ble Supreme Court in *Satender Kumar Antil Vs. CBI* (2022) 10 SCC 51 assume relevance. The relevant paragraphs of the afore-mentioned judgment are as follows:-

"41.Sub-section (2) has to be read along with Sub-section (1). The proviso to Sub-section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable

and prolonged delay in concluding trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision Under Section 436 A of the Code which stands on a different footing.

42.

43. *A suspension of sentence is an act of keeping the sentence in abeyance, pending the final adjudication. Though delay in taking up the main appeal would certainly be a factor and the benefit available Under Section 436 A would also be considered, the Courts will have to see the relevant factors including the conviction rendered by the trial court. When it is so apparent that the appeals are not likely to be taken up and disposed of, then the delay would certainly be a factor in favour of the Appellant.*

44. *Thus, we hold that the delay in taking up the main appeal or revision coupled with the benefit conferred Under Section 436 A of the Code among other factor sought to be considered for a favourable release on bail."*

In view of the guidelines propounded by Hon'ble the Supreme Court in the case of **Satender Kumar Antil (supra)** on the subject of bail on the ground of long period of incarceration, the sentence of the present applicant deserves to be suspended as the right to a fair and speedy trial, being an integral facet of Article 21 of the Constitution, cannot be defeated by inordinate delay in adjudication.

13. In the totality of circumstances, where (i) there is prima facie non-compliance of mandatory statutory provisions, (ii)

serious infirmities exist in the chain of custody of samples, (iii) the conviction substantially rests upon an FSL report of doubtful admissibility, and (iv) the appellant has undergone substantial incarceration, it is evident that the rigours contained under Sections 32-A and 37 of the NDPS Act would not operate as an absolute bar. The issues raised are substantial in nature and warrant a comprehensive re-appreciation of evidence. There exists a reasonable possibility that, upon such re-evaluation, the appellant may derive benefit. Consequently, the case presents itself as a fit one for suspension of sentence during the pendency of the appeal.

11. Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. (corresponding to Section 430 BNSS) 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-applicant named above shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail 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 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 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(s), they will give in writing their changed address to the trial Court.

12. The learned trial Court shall keep the record of attendance of the accused-applicant 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 applicant does 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