

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

S.B. Criminal Misc Suspension of Sentence Application No.
676/2025

In

S.B. Criminal Appeal (Sb) No. 732/2025

Mahaveer S/o Jawala Singh Shankhla, Aged About 24 Years,
Resident Of Bhopa Ka Bada Near Police Line Ajmer Presently
Tenant Of Mithu Lal Mali Kirkheda Chittorgarh Rajasthan (Lodged
In Dist. Jail, Chittorgarh)

----Appellant

Versus

State Of Rajasthan, Through Pp

----Respondent

For Appellant(s) : Mr. Bhawani Singh

For Respondent(s) : Mr. Surendra Bishnoi, PP

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

23/03/2026

1. I have seen the report of the Police, which states that the notices were served to the victim via phone, as the victim had vacated the address provided at the time of the alleged offence. Such service is treated as duly effected.
2. Learned Public Prosecutor accepts notice on behalf of the respondent-State.
3. The present appeal is preferred by the accused-applicants aggrieved by the order of conviction and sentence dated 04.04.2025 passed in Sessions Case No. 03/2023 (35/2023) for the offences punishable under Sections 376 and 450 IPC passed by learned Additional Session Judge No. 2, Chittorgarh.
4. Admit.

5. Call for record.
6. Heard on the application for suspension of sentence.
7. Learned counsel for the accused-applicant submits that the medical evidence only reflects detection of semen on the petticoat of the victim. On DNA profiling obtained from the semen found on the petticoat compared with the DNA of the accused – applicant, the DNA was found not matching. It is also demonstrated that the victim was 24 years old and if there was any forcible sexual intercourse there must have been some resistance on the part of the victim which would have resulted in some injury on the parts of the body which is absent in the present case. It is also submitted that presence of semen itself is not a fact which will corroborate the victim's evidence for the reason that the victim is married having a husband and there could be a chance of being the semen of her own husband. It is also submitted that there are other inmates living in the same premises and if any such forcible sexual intercourse took place, the victim would have made hue and cry which would have alerted the other inmates present in the premises. The investigating officer has not ventured to examine such witnesses.
8. Learned public prosecutor submitted that the trial court has convicted the accused - applicant basing on the testimony of the victim which has sanctity and non-matching of DNA profile does not demolish the case of the prosecution. In fact, it is one of the corroborating circumstance for the victim's evidence.
9. This Court having considered the submissions of both the counsels and considering the fact that the accused – appellant is

already in jail for nearly one year as well as the fact that there no likelihood of hearing of the appeal, in such circumstances, the application for suspension of sentence under Section 389 of Cr.P.C. (Section 430 of BNSS) is allowed and sentence of appellant accused - **Mahaveer S/o Jawala Singh Shankhla** is suspended till disposal of appeal with the condition that he shall execute a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the concerned Magistrate for his appearance in this court on **28.04.2026** and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

- i. That he/she/they shall appear before the trial Court as fixed by the Trial Court on first appearance. The next appearance shall be fixed with time gap of one year till the appeal is decided.
- ii. That if the applicant(s) changes the place of residence, he/she/they shall inform in writing his/her/their changed address to the trial Court as well as to the counsel in the High Court.
- iii. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

(MUNNURI LAXMAN),J