

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

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 757/2026

CNR: RJHC010404122026 | URN: SOSA / 1583U / 2026

Omaram S/o Khimaram, Aged About 53 Years, R/o Godaro Ki
Dhani, Rohichha Kalla, P.s. Luni, District Jodhpur (Raj) (At
Present Lodged At Sub Jail Bali)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Bhanwaru Ram
For Respondent(s)	:	Mr. Ramesh Dewasi, PP

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

28/07/2026

Heard learned counsel for the applicant-appellant and
learned Public Prosecutor on the application seeking suspension of
sentence.

Drawing the attention of the Court to the impugned
judgment dated 15.04.2026 passed by the learned trial Court, as
well as the statements of the Seizure Officer and the Investigating
Officer recorded during trial, learned counsel for the applicant-
appellant submitted that, as per the prosecution, on 11.04.2006,
a police team of the Excise Police Station, Bali, while conducting
nakabandi near Hari Om Ashram, Charbhuja-Desuri Nala,
intercepted a Maruti Esteem car bearing registration No. MH04-N-
3724. On noticing the police party, both the driver and the co-
occupant of the vehicle attempted to flee from the spot. While the

police succeeded in apprehending the driver, the co-occupant managed to escape. Upon search of the vehicle, police recovered contraband namely poppy husk contained in 13 sacks weighing total of 208 Kgs.

Learned counsel submitted that the driver of the vehicle disclosed the identity of the absconding co-occupant as Omaram, the present applicant-appellant. It was contended that, apart from the disclosure statement of the co-accused, there is no direct or circumstantial evidence available on record to establish that the applicant-appellant was travelling in the offending vehicle or was transporting the contraband along with co-accused Devaram.

Learned counsel further submitted that the Seizure Officer, during his deposition before the learned trial Court, admitted that he had drawn representative samples from all the 13 sacks of the seized contraband and thereafter mixed those samples into two plastic bags before forwarding them for forensic examination. It was contended that the said procedure is contrary to the law laid down by this Court in **Netram v. State of Rajasthan**.

Learned counsel argued that, on account of the mixing of the representative samples, it became impossible to ascertain whether the contents of each individual sack constituted contraband and, consequently, whether the quantity allegedly recovered from the possession of the accused fell within the category of commercial quantity. It was thus submitted that the sampling process suffers from a serious procedural irregularity, rendering the prosecution case open to substantial challenge.

Learned counsel further submitted that the applicant-appellant remained on bail throughout the trial and never misused

the liberty so granted. It was also submitted that the present appeal raises several substantial and arguable questions of law and fact requiring detailed consideration at the time of final hearing.

Lastly, learned counsel submitted that, having regard to the heavy pendency of criminal appeals before this Court, the appeal is not likely to be heard in the near future. It was further submitted that the applicant-appellant has no criminal antecedents and there is no likelihood of his absconding or fleeing from justice if the substantive sentence awarded by the learned trial Court is suspended during the pendency of the appeal.

Per contra, the learned Public Prosecutor vehemently opposed the application for suspension of sentence. He submitted that the impugned judgment of conviction is based on cogent, reliable and convincing evidence and, therefore, no case for suspension of sentence is made out.

Upon a consideration of the arguments advanced on behalf of the parties and having regard to the facts and circumstances of the case as available on the record, this Court is of the opinion that it is a fit case for suspending the sentences awarded to the accused appellants during the pendency of the instant appeal.

Accordingly, the application for suspension of sentence filed under Section 430 BNSS (389 Cr.P.C.) is allowed and it is ordered that the sentence passed by the learned Additional Sessions Judge, Bali, District-Pali, vide order dated 15.04.2026 in Sessions Case No.37/2016(28/2011) CIS No.34/2016 (State of Rajasthan Vs. Omaram & Ors.) against the appellant-applicant **Omaram S/o Khimaram**, shall remain suspended till the final disposal of the

S.B. Criminal Appeal No.800/2026 and he shall be released on bail, provided he executes a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for his appearance in this court on **01.09.2026** and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he/she/they will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant(s) changes the place of residence, he/she/they will give in writing his/her/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.

The learned trial Court shall keep the record of attendance of the accused-applicant(s) in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant(s) was/were 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(s) does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

(KULDEEP MATHUR),J