

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

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 2062/2025

In

S.B. Criminal Appeal No.2535/2025

Aman Kumar S/o Shri Prejraj Jat, Aged About 30 Years, Resident
Of Kikarwali, Police Station Muklava District Sri Ganganagar.at
Present House No. 1070 Lic Colony, Police Station Sadar,sri
Ganganagar. (At Present Lodged In Central Jail, Sri Ganganagar.)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Sunil Bishnoi

For Respondent(s) : Mr. N.S. Chandawat, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

27/04/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicant in the matter of judgment dated 19.09.2025 passed by the learned Special Judge, NDPS Act Cases, Sri Ganganagar in Sessions Case No.04/2020 whereby he was convicted and sentenced to suffer maximum imprisonment of twenty years RI along with a fine of Rs. 2,00,000/- on each count under Sections 8/22 & 8/22 r.w. 29 NDPS Act with default sentence.

2. Brief facts of the case are that on 22.07.2019, Digpal Singh, SHO, Police Station Purani Aabadi, Sri Ganganagar, while on patrol duty with the police party, received confidential information near Truck Union Pulia. Acting thereupon, the police proceeded to A-Minor Pulia, Kunj Vihar Second, where two persons seated on the culvert, on noticing the police, attempted to escape but were

immediately apprehended. They disclosed their identities as Aman Kumar and Devkaran.

2.1. Upon search, the bag carried by Aman Kumar allegedly yielded 2,500 Trio-SR Tablets (100 mg), whereas the bag of Devkaran allegedly contained 1,250 Trio-SR Tablets (100 mg). Consequent thereto, FIR No. 227/2019 came to be registered for offences under Section 8/22 NDPS Act, and after due investigation, charge-sheet was submitted for offences under Sections 8/22 and 8/29 of the NDPS Act.

2.2. The learned trial Court, upon hearing the parties on charge, framed charges against the accused-appellant, who denied the allegations and claimed trial. During trial, the prosecution examined fifteen witnesses and exhibited fifty-three documents. The statement of the accused under Section 313 Cr.P.C. was also recorded. Thereafter, vide judgment dated 19.09.2025, the learned trial Court convicted the appellant for offences under Sections 8/22 and 8/22 read with Section 29 of the NDPS Act and imposed the sentence as specified therein. Hence, the present application seeking suspension of sentence.

3. 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.

4. Learned Public Prosecutor has opposed the prayer for suspension of sentence.

5. Heard learned counsel for the parties and perused the material available on record.

6. 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.

7. 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

8. 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.

9. 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

10. 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.

11. A careful scrutiny of the material available on record prima facie indicates that the prosecution case is beset with substantial procedural lapses and legal infirmities, thereby rendering the conviction of the applicant open to serious doubt and furnishing substantial and arguable grounds in appeal. At this interlocutory stage, the applicant appears to have raised a credible challenge warranting deeper appellate scrutiny. One of the foremost issues pertains to the manner in which the alleged recovery and seizure

were effected, the legality whereof has been seriously assailed. Prima facie, the proceedings do not inspire confidence regarding faithful adherence to the Standing Orders issued by the Government of India, namely Standing Order No. 1/88 and Standing Order No. 1/89, which prescribe safeguards in matters of seizure, sampling, sealing and preservation of contraband articles.

11.1. The alleged seizure was effected by PW-3 Digpal Singh, who deposed that the recovered articles were sealed for the purpose of chemical examination. However, the record does not, at least prima facie, demonstrate scrupulous observance of the mandatory safeguards intended to preserve the sanctity of the seized substance and maintain an unimpeachable chain of custody.

11.2. Of greater significance is the apparent non-compliance with the mandate of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985. The inventory purportedly prepared under the said provision was neither duly proved by the prosecution nor formally exhibited in evidence through the concerned Magistrate, who was not examined during trial. Consequently, the statutory mechanism devised to lend authenticity to the inventory, samples and certification process appears to have remained insufficiently established.

11.3. Furthermore, prima facie discrepancies are discernible between the inventory allegedly prepared under Section 52A and the other contemporaneous documents relating to seizure, sampling and deposit of the contraband. Such inconsistencies assume material significance in prosecutions under the NDPS Act, where strict procedural compliance is regarded as an indispensable safeguard.

11.4. The testimony of the Investigating Officer itself introduces further uncertainty regarding the precise procedure adopted for sealing, custody and sampling of the seized substance. One of the principal objects underlying Section 52A is to preserve representative samples in a legally verifiable manner so as to facilitate re-examination by the Forensic Science Laboratory, should the necessity arise. In the present matter, the integrity of that safeguard appears, prima facie, to have been materially compromised.

11.5. Having regard to the cumulative effect of the aforesaid procedural deficiencies, the inconsistencies touching sealing and safe custody, and the prima facie absence of strict compliance with the Standing Orders as well as Section 52A of the NDPS Act, and further considering that the accused-applicant has already undergone more than five years of substantive sentence, this Court also cannot remain oblivious to the heavy pendency of old criminal appeals before this Court, owing whereunto there appears no reasonable probability of the present appeal being taken up for final hearing in the near future. In such circumstances, this Court is of the considered opinion that the matter constitutes a fit case for suspension of the substantive sentence awarded to the applicant-appellant during pendency of the appeal.

12. 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.

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