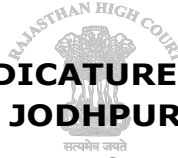




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



D.B. Criminal Misc Suspension Of Sentence Application (Appeal)
No. 2260/2025

Kapil Budania S/o Shri Ashok Kumar, Aged About 27 Years,
Village Dhudwakhara, At Present W.no. 11, Sainik Basti, Churu,
Dist. Churu. (At Present Confined In Central Jail, Bikaner).

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Arun Choudhary S/o Shri Hanuman Choudhary, R/o
Kishanpura, Tehsil Dataramgarh, District Sikar

-----Respondents

For Petitioner(s)	:	Mr. R.S. Choudhary with Mr. S.S. Gour Mr. Jitendra Singh Bhanwariya
For Respondent(s)	:	Mr. S.S. Rathore, PP

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANDEEP SHAH**

Order

23/03/2026

1. The appellant-applicant herein has been convicted and sentenced vide judgment dated 23.05.2023 passed by the learned Additional Sessions Judge, Sardarshahar, District Churu in Sessions Case No.01/2021 (226/2018).
2. The appellant-applicant has preferred the application for suspension of sentence under Section 389 Cr.P.C. for suspension of sentences during the pendency of the appeal and for release on bail.
3. Learned counsel for the appellant-applicant submits that similarly placed co-accused Jinendra Singh and Nitesh Jyani have been accorded the benefit of suspension of sentence by this Court



vide orders dated 14.11.2025 and 25.09.2024 in D.B. Criminal Misc. Suspension of Sentence Application (Appeal) No. 1659/2025 and No. 956/2024 respectively. It is further submitted that the case of the present appellant-applicant is not distinguishable from that of the said co-accused and accordingly, the appellant-applicant may also be accorded the benefit of suspension of sentence on the same parity.

4. Learned counsel for the appellant-applicant further submits that the date of arrest of co-accused Jinendra Singh was 10.01.2019, whereas the present appellant-applicant has been in custody since 12.08.2018. He further submits that neither the present appellant-applicant nor the said co-accused Jinendra Singh was named in the FIR. He further submits that Exhibit 8 was shown qua co-accused Jinendra Singh at the police station, and the same position obtains in the case of the present appellant-applicant, though qua him it is Exhibit 7. He further submits that the iron rod recovered in the case of the present appellant-applicant was sent for FSL examination , unlike in the case of co-accused Jinendra Singh where the same was not sent for FSL, however, the FSL report did not detect the presence of blood thereon. It is submitted that in all other material aspects, the contentions and the factual matrix of the present appellant-applicant's case are identical to that of the said co-accused.

5. Learned Public Prosecutor, though opposing the application for suspension of sentence, fairly concedes that the factual matrix in the case of the present appellant-applicant and that of both the aforesaid co-accused are on the same footing and are substantially identical.



6. This Court, upon a conjoint consideration of the material on record, particularly the fact that the appellant-applicant has been in continuous judicial custody since 12.08.2018 and that the case of the present appellant-applicant stands on the same parity as that of co-accused Jinendra Singh and Nitesh Jyani, whose sentences have already been suspended by this Court, deems it appropriate to suspend the substantive sentence of the appellant-applicant during the pendency of the appeal.

7. Accordingly, the instant application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that substantive sentence passed by learned Additional Sessions Judge, Sardarshahar, District Churu in Sessions Case No.01/2021 (226/2018), against the appellant-applicant, namely, **Kapil Budania S/o Shri Ashok Kumar**, 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 learned trial Judge for his appearance in this court on **27.04.2026** 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 change 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.



8. 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 relating 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 the cases in the trial court. In case the said accused-applicant does not appear before the trial court, learned trial Judge shall report the matter to the High Court for cancellation of bail.

(SANDEEP SHAH),J

(DR.PUSHPENDRA SINGH BHATI),J

95-Sudheer/-