

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal 3rd Misc Suspension Of Sentence Application
(Appeal) No. 149/2026

In

S.B. Criminal Appeal No.158/2023

Anwar @ Annu S/o Noordeen, Resident Of Pandit Bas Bakhtal Ki
Chowki, Police Station Udyog Nagar, Alwar, District Alwar (Raj.).
(At Present Confined In Central Jail, Alwar)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Petitioner(s)	:	Mr. Kapil Gupta
For Respondent(s)	:	Mr. Gajendra Singh Rathore Mr. Rajendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

23/02/2026

1. Instant application for suspension of sentence is preferred by appellant-accused in pending appeal filed aggrieved from order of conviction and sentence dated 07.01.2023 and 09.01.2023 in Sessions Case No.75/2021 passed by learned Special Judge (POCSO Act, Cases), No.1, Alwar whereby appellant was convicted for charges under Sections 363, 366, 376, 506, 323, 341, 354A IPC and Section 3/4, 7/8 POCSO Act.
2. Learned counsel for the appellant while relying upon grounds of appeal submitted that without observing principle of law learned trial court has arrived at a conclusion of conviction.

He further submitted that learned trial court has overlooked material contradictions and discrepancies, which goes to root of the matter. He further submitted that the entire case of prosecution rests on testimony of interested witness and no independent witness was examined to corroborate the story of prosecution.

3. Learned counsel for appellant submits that after dismissal of SOS application on 31.05.2023, the appellant's appeal has not been listed for consideration by this Hon'ble Court. He further submitted that period of custody undergone by the appellant is more than 4 years 4 months. He also submitted that age of victim is just below the 18 years, though there are two date of birth on record which were considered by this Hon'ble Court. He also referred the observation made by this Court in order dated 31.05.2023 and submitted that the appellant has strong case to succeed in appeal, but appeal has not been considered on merits. At last he submitted that age of prosecutrix is around 18 years and appellant is of 20 years.
4. Aforesaid contentions were opposed by learned Public Prosecutor and learned counsel for complainant. Learned counsel for complainant has submitted that appellant has even not undergone 50 percent of the sentence awarded to him. He submitted custody certificate and same is taken on record.
5. Heard learned counsel for parties and learned Public Prosecutor. Perused the record.

6. On the basis of Exhibit D6 complaint filed on 25.01.2021 by PW2 about kidnapping and rape with victim PW1 on 19.01.2021 by petitioner accused, FIR No. 66/2021 was registered on 25.01.2021 at PS Udyog Nagar, Alwar. After investigation, police has filed a charge sheet against appellant. The appellant was released on bail pursuant to order dated 17.08.2021 in bail application No. 4471/2021 by a coordinate bench of this Court. After framing charge, the prosecution has examined 16 witnesses and produced 25 documents and 2 articles. The accused was examined under Section 313 Cr.P.C. and exhibited 8 documents, but did not submitted any defense evidence. The trial court has convicted appellant under sections 363, 366, 376, 506 323, 341, 354A IPC and 3/4, 7/8 of POCSO Act. The maximum sentence awarded under Section 3/4 POCSO Act is 10 years. The first SOS application of appellant was dismissed by this court on 31.05.2023 and second SOS was dismissed on 04.03.2025.

7. While dismissing first SOS application, we have considered the case on merits and we have observed as under:

6. A perusal of record clearly indicated that appellant remained on bail during trial in pursuant to order dated 17.08.2021 in S.B. Criminal Misc. Bail Application No.4471/2021 passed by a Coordinate Bench of this court. The reasons of bail includes nature of allegations, length of custody, filing of charge-sheet, contents of FIR and statement of victim under Sections 161 and 164 of Cr.P.C. and also

another witness under Section 161 Cr.P.C. etc. Herein, after being released on bail appellant had not misused any liberty but the fact of the matter is that appellant is before us after recording of conviction by learned trial court that too on the basis of deposition of victim PW1 along with corroboration from FSL/DNA reports.

7. Herein, the evidence clearly suggests that two date of birth one as 23.09.2003 and another as 13.09.2004 were brought on record but no other date of birth was suggested to any of witness and from both dates including of 2003, the victim was minor on date of incident. No doubt about it that victim was just below the age of 18 and the age of appellant was nearly 20 years but the question is victim was minor on date of incident and the law of the land is that victim is not competent to give consent for any act whether it is physical relationship or accompanying as willing partner in any love affair.

10. Aforesaid clearly indicated that victim was a school going girl and her age was not proper for any sexual activity as she was not adult on date of incident. Moreover, her understanding is again a questionable issue, therefore, this court cannot consider the future of appellant at the cost of victim because scars of incident like this always haunts the victim and rehabilitation is again a big challenge for family itself.

8. After considering aforesaid, there is no need to reconsider the merits of the case at this stage of SOS. The appellant has undergone more than 4 years 3 months against maximum awarded sentence of 10 years. The age of present

appellant is 20 years and age of victim is less than 18 years, but certainly more than 16 years. Thus, considering the period of custody and also the fact that maximum sentence is 10 years and petitioner appellant has undergone around 45% of the sentence awarded to him, it is a fit case to consider the release of appellant on bail.

9. Therefore, without expressing any opinion on merits, I am of considered view that it is a fit case wherein appellant can be enlarged on bail. The application under Section 430(1) B.N.S.S. is allowed and sentence of appellant accused- **Anwar @ Annu S/o Noordeen** is suspended till disposal of appeal with the condition that he would 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 for his appearance in this court on 12.05.2026 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. After release of appellant on bail, he will not indulge in any criminal activity and if it is found that he is involved in any criminal activity, the order shall be recalled.
2. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
3. 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.

4. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

5. In case, the applicant has violated any condition, then the order of SOS shall be recalled and cancelled.

10. Misc. Application stands disposed of.

11. A copy of this order be sent to learned trial court through E-mail.

(ASHOK KUMAR JAIN),J