

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. 2nd Suspension Of Sentence Application
(Appeal) No. 126/2026

In

S.B. Criminal Appeal No.1266/2024
CNR: RJHC020061442026 | URN: SOSA / 280U / 2026

Mangal Chand S/o Moolaram Balai, Aged About 33 Years, R/o Malyawali, Tan Heera Nagar, Police Station Kotwali, Neemkathana, District Sikar (Raj.). (At Present Confined In Special Central Jail Bikaner)

-----Petitioner

Versus

State Of Rajasthan, Through P.P.

-----Respondent

For Petitioner(s)	:	Mr. Rakesh Kumar Saini
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP with Mr. Onkar Singh Rajpurohit, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

06/08/2026

1. The 2nd application for suspension of sentence is preferred by appellant - **Mangal Chand S/o Moolaram Balai** in pending appeal filed aggrieved from order of conviction and sentence dated 21.10.2023 in Sessions Case No.63/2018 passed by learned Special Judge (POCSO Act Cases) No.2, Sikar whereby appellant was convicted for offence under Sections 377 of IPC read with Section 5(m)(I)/6 of POCSO Act and sentenced accordingly.
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 petitioner submits that first SOS of present petitioner was dismissed on 03.07.2025, and petitioner is in custody and till date, the period of custody is more than 3 years and 6 months. He submitted that the victim is a boy and not a girl, and present petition has to be considered in light of the fact that the offence under Section 377 of IPC was declared unconstitutional. He also submitted that testimony of victim is not trustworthy and the victim has improved his earlier statement and gave false evidence against the petitioner. At last, he submitted that there is no criminal antecedents against the petitioner.

4. Aforesaid contentions were opposed by learned Public Prosecutor. Learned Public Prosecutor has submitted report received from PS Sadar, Neem-ka-Thana, District Sikar, along with intimation to complainant and custody certificate, and same are taken on record.

5. Heard learned counsel for petitioner and learned Public Prosecutor. Perused the record.

6. On earlier occasion, this Court has considered first SOS application of present petitioner on 03.07.2025, wherein we have observed as under while dismissing the SOS application of present applicant:-

5. On the basis of report Ex.P-7 lodged by PW-5 about unnatural sex, FIR No.184/2016 was registered at P.S. Neem-ka-thana on

02.07.2016. After investigation, police has filed charge-sheet against appellant who faced trial after framing charge. The prosecution has examined 13 witnesses and exhibited 22 documents. The accused was examined under Section 313 Cr.P.C. and he has not submitted any defence evidence but exhibited two documents. The trial court has convicted appellant under Section 377 IPC rws 5(m)/6 of POCSO Act and sentenced to undergo 10 years of imprisonment. The victim was medically examined on 02.07.2016 and report Ex.P-10 was prepared at 4.10 P.M. on 02.07.2016, proved by PW-6 Dr. Hari Singh. The report indicated several bruises and diffused swelling on body of victim. The finding suggested that perennial area inflamed and mucus inflamed, anal tone increased with lespinder though there was no bleeding.

6. We have considered statement of victim recorded as PW-4. His evidence suggested about anal penetrative sexual assault by appellant. The appellant was released on bail in pursuant to order dated 08.09.2016 in bail application No.11482/2016 by a Co-ordinate Bench of this Court but age of victim clearly shows that his date of birth is 10.10.2004 and same is proved by PW-7 Amichand. Thus, on date of incident the age of victim is less than 12 years. Since it is a case of sexual assault with 12 years old boy and evidence on record including medical evidence suggest sexual assault with victim, therefore this is not a fit case wherein only on basis of period of custody of two years 2 months and 25 days and also

*the fact that appellant was on bail during trial,
he be released on bail.*

7. The material on record clearly indicate that the age of victim is less than 12 years and victim has been examined before the Trial Court as PW-4, and we have considered his statement. We have also considered a fact that after the incident, the body of victim was examined by PW-6, Dr. Hari Singh. The findings suggests that perennial area and mucus were inflamed, and anal tone increased with lespinder, though there was no bleeding.

8. Present petitioner is in custody after sentence, and the period of custody is approximately 3 years, 6 month, but the age of victim is less than 12 years.

9. Considering the gravity of the offence, the petitioner is not entitled for bail on any of the grounds as mentioned by learned counsel for petitioner.

10. Hence, the second application for suspension of sentence is hereby dismissed.

(ASHOK KUMAR JAIN),J