

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal 2nd Misc Suspension Of Sentence Application
(Appeal) No. 204/2026

In

S.B. Criminal Appeal No. 1987/2024

Kuldeep Malav S/of Shri Brijmohan Malav Dhakkad, Aged About 33 Years, R/o Village Pisaheda, Post Amli (Jhaad), Police Station Devli Manjhi, District Kota, Presently Sonu Shukla Ke Makan Me Kiraye Se, Gali No. 2, Dadwada, Police Station Bhimganjmandi, Kota, (Raj. (At Present Lodged In Central Jail, Kota)

-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor.

-----Respondent

For Petitioner(s)	:	Mr. S. Gaharana Mr. Ankur Nagar
For Respondent(s)	:	Mr. Rajendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

23/02/2026

1. Instant SOSA is preferred by appellant accused **Kuldeep Malav** in pending appeal filed aggrieved from judgment of conviction and sentence dated 09.05.2024 in sessions case no. 17/2021 passed by learned Special Judge, POCSO Act cases no.1, Kota whereby the appellant accused was convicted under Sections 363, 366, 376(3), 376(2)(N) of IPC and Section 5(L)/6 and 11/12 of POCSO Act. The maximum sentence awarded to present appellant is 20 years.
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 first SOS application was dismissed by this Hon'ble Court on 15.05.2025 and since then the appellant is in custody. He further submitted that appellant is a young man having family responsibility and till date he has undergone substantial period of sentence. He further submitted that after dismissing SOS application, criminal appeal was fixed for consideration in month of November, 2025 but same has not been listed for consideration.
4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted custody certificate along with report received from concerned police station and intimation slip and same are taken on record.
5. Heard learned counsel for appellant and learned Public Prosecutor. Perused the record.'
6. On the basis of report Ex. P/22 about missing of 15 years old sister of PW-11 FIR no. 149/2020 was registered at P.S. Kaithunipol, District Kota City under Section 363 IPC. The victim was recovered on 12.10.2020, and was medically examined and statement under Section 164 Cr.P.C. was recorded (exhibited as Ex. P/8). The charge-sheet was filed

against the appellant accused. After framing the charge the prosecution has examined 16 witnesses and exhibited 32 documents. The statement of accused was recorded under Section 313 Cr.P.C. and he has examined himself as DW-1 in defence and exhibited Ex. D/1. The appellant accused was convicted under Sections 363, 366, 376(3), 376(2)(N) of IPC and Section 5(L)/6 and 11/12 of POCSO Act.

7. We have considered SOS application on merits on 15.05.2025 and while dismissing the SOS application, we have observed as under:

6. We have considered the statement of victim recorded as PW-1 and her date of birth is 07.11.2005. To establish the date of birth of victim, PW-6 Sharafatullah Sheikh was examined and he exhibited P/12 to P/14. The victim was admitted for the first time in the school for which the evidence was led by prosecution. As per PW-11 victim was his younger sister but cross-examination of PW-2 mother of victim suggests that she was married 30 years before the incident but her age was indicated as 35 years. Moreover, as per her after 5 years of marriage victim was born. Herein, the age difference between PW-2, PW-1 and PW-11 clearly indicate that admission of PW-2 is not near reality, therefore, the estimation of age on the basis of cross-examination of PW-2 is not possible. The trial court after considering the provision of Section 94 of JJ Act has determined the age of victim and it indicate that the victim was less than 16 years of age on date of incident.

7. Considering statement of victim under Section 164 Cr.P.C. and further statement as PW-

1 before the trial court, we cannot presume consent of victim because the age of victim is less than 16 years. The consent at this stage is immaterial as the age of victim was determined below 16 years. The victim was in custody of her parents and she was enticed to leave her home.

8. We have considered the cross-examination of witnesses as referred by learned counsel for appellant along with other grounds as mentioned by learned counsel for appellant, the grounds raised are not sufficient to allow SOS application.

9. This appellant accused was released on bail in pursuant to order dated 10.02.2021 in criminal appeal no. 138/2021 by a Co-ordinate Bench of this Court but now he is in custody since 09.05.2024. The age of victim is less than 16 years, therefore, looking to gravity of offence committed by the accused, I am of the considered view that this is not a fit case wherein indulge of bail can be granted to appellant accused.

8. This court has already dismissed SOS application on merits on 16.05.2025. The appellant has undergone more than 2 years 4 months against maximum awarded sentence of 20 years. The period of incarceration is not sufficient to consider the case of appellant on the basis of period of custody.
9. The criminal appeal was not listed in month of November, 2025, but the appellant can file an application for early listing and may request the court to list on any of the Saturday, which is almost a comfortable day for hearing any appeal.

10. The age of victim is less than 16 years and the period of incarceration is just 2 years and 4 months against maximum awarded sentence of 20 years, therefore this is not a fit case to enlarge appellant on bail.
11. In view of aforesaid, the instant SOS application preferred by appellant accused is hereby dismissed.
12. Misc. application stands disposed of.

(ASHOK KUMAR JAIN),J