

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc 2nd Suspension Of Sentence Application No.
167/2026

in

S.B. Criminal Appeal No. 118/2024

Dinesh Kumar S/o Omprakash, R/o Ward No. 26, Near Shiv
Mandir, Nayapura Lakheri Police Station Lakheri, District Bundi
Raj. (At Present In District Jail Bundi)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Ankush Sharma
For Respondent(s)	:	Mr. Rajendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

10/03/2026

1. Instant second application for suspension of sentence is preferred by appellant-accused aggrieved from judgment of conviction and sentence dated 21.12.2023 in sessions case No. 71/2023 passed by learned Special Judge, POCSO Act Cases No.1, Bundi whereby appellant-accused was convicted and sentenced under Sections 363, 366, 376(3), 376(2)(n) IPC and Section 3/4(2), 5(L)/6 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 petitioner has submitted that the age of victim is claimed by prosecution was just below 16 years, whereas the age of present petitioner is just above 18 years. He also submitted that the petitioner remained in custody since 16.05.2023 and the period of custody is more than three years and three months. He further submitted that the statement of victim recorded by the trial court clearly indicate that the victim was a consenting party to the relationship. He also submitted that the report was registered against unknown person and not against the present petitioner. He also referred the material on record and submitted that this is a case wherein present petitioner was convicted without element of criminal mind.

4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted report received from P.S. Lakheri, District Bundi along with intimation to complainant and latest custody certificate.

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

6. First SOS application of present petitioner was dismissed by this court on 10.07.2025 and we have observed as under:

"7. In report, Ex. P.1 present applicant was neither named nor any allegation is made against him, but after recovery in statement under Section 164 Cr.P.C. victim has mentioned that on earlier occasion, she went to Chittorgarh with Dinesh for three days, but with permission of parents but later she left alone and Dinesh met her at railway station. The evidence suggest that, she stayed with Dinesh for one and half months and they

had physical relation. This victim was medically examined and report exhibit P.3 was prepared. There was no marks of violence or injury and hymen was old torned and healed. The FSL report Exhibit C.1 suggest that allies of male DNA profile obtained from blood sample of accused are matching with DNA profile obtained from underwear of victim, which means that human semen was detected on underwear of victim and same belongs to present applicant-accused. The victim was examined as PW-3 before the trial court and we have considered her statement particularly cross-examination. The victim wants to marry accused and she voluntarily left her with accused, but the age of victim is less than 16 years and there is no legal material to consider that the age of victim is more than 16 or 18 years, therefore, looking to the age of victim, I am of the considered view that consent is immaterial and the applicant is not entitled to be released on bail.

8. Thus, S.B. Criminal Misc Suspension of Sentence Application (Appeal) No. 91/2024 preferred by appellant-accused **Dinesh Kumar S/o Omprakash** is hereby dismissed."

7. The age of victim is 15 years and 9 months based on date of birth dated 27.06.2007. The material on record indicate that the trial court has determined the age in accordance with section 94 of the Juvenile Justice (Care and Protection of Children) Act. This court has already considered merits of SOS application.

8. The defence of consent was raised before the trial court and same was considered by the trial court. The material also suggested that the victim remained in company of present petitioner for more than one and a half month. There was no injury on genital of victim as per medical report Exhibit P/3. Present petitioner has disclosed his age as 23 years while being examined by the trial court under section 313 of Cr.P.C. As per

arrest memo, the age of present petitioner is 22 years. We have taken note of the interrogation note and also a copy of Aadhaar card with interrogation note which indicate that date of birth of present petitioner is 22.05.2001.

9. The petitioner has served three years, three months and seven days as against maximum awarded sentence of 20 years. The age of victim is less than 16 years. Therefore, consent cannot be presumed in the instant case.

10. Considering the nature and gravity of offence, this is not a fit case to enlarge appellant accused on bail.

11. Thus, S.B. Criminal Misc Suspension of Sentence Application preferred by appellant-accused **Dinesh Kumar S/o Omprakash** is hereby dismissed.

(ASHOK KUMAR JAIN),J