

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc. 3rd Suspension Of Sentence Application

No. 345/2026

IN

D.B. Criminal Appeal No.344/2022

1. Vishram S/o Bhorya, Aged About 70 Years, Resident Of Ajijpur, Police Station, Police Station, Todabhim, District Karauli (Presently Accused-Petitioner Is Confined In Central Jail Bharatpur)
2. Pratap @ Partap S/o Tannu Ram, Aged About 75 Years, Resident Of Ajijpur, Police Station, Police Station, Todabhim, District Karauli (Presently Accused-Petitioner Is Confined In Central Jail Bharatpur)

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. A.K. Gupat, Senior Advocate assisted by Mr. Rinesh Gupta.
For Respondent(s)	:	Mr. Naresh Kumar Gupta, Deputy Government Advocate assisted by Mr. Vinod Kumar Sharma.
For Complainant(s)	:	Mr. Ashvin Garg assisted by Mr. Ripudaman Shekhawat.

HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

07/05/2026

1. This 3rd suspension of sentence application has been filed by the applicants along with the appeal.
2. Learned Senior Counsel for the applicants has annexed the certificate under Rule 311 (3) of the Rajasthan High Court Rules to the effect that the sentence of life imprisonment has been

awarded to the applicants under Section 302/149 of IPC and they are in judicial custody at Central Jail, Bharatpur. He further submits that the applicants have been falsely implicated in this matter and they have served the sentence for a period of more than two years. He further submits that after dismissal of the second suspension of sentence application the appeal has not been taken up for hearing and therefore, prayed that sentence awarded to the applicants may be suspended and they be released on bail during the pendency of the appeal.

3. Learned Deputy Government Advocate assisted by counsel for the complainant opposed the application for suspension of sentence and submitted that the matter was listed on 25.11.2025 on which date counsel appearing on behalf of the applicants sought adjournment. They further submitted that this court on 19.09.2025 while dismissing the second suspension of sentence application filed on behalf of the applicants observed as under:-

"1. Heard on these second applications for suspension of execution of sentence and perused the material available on record.

2. Earlier, vide order dated 30.01.2023, the applications for suspension of execution of sentence (Nos.125/2023 and 126/2023) filed on behalf of the applicants-appellants were accepted; the execution of sentence was suspended and they were released on bail. Thereafter, petition for special leave to appeal (Crl) (Nos.4505-4506/2023) were preferred by the complainant Kadyaram before Hon'ble Supreme Court challenging the order dated 30.01.2023 whereby the SOS applications of the applicants-appellants were accepted and they were released on bail. Vide order dated 21.10.2024, Hon'ble Apex Court allowed the appeals and quashed the order dated 30.01.2023 and directed the applicants-appellants to surrender before the trial court within four weeks. It was also observed that the order would not foreclose

option of the accused to apply afresh for suspension of sentence, after surrender. In pursuance of the above direction, the applicants have surrendered before the trial court and now, they are serving the sentence.

3. Learned counsel for the applicants-appellants submit that the learned trial court has erred in convicting and sentencing the appellants by impugned judgment dated 17.11.2022. It is argued that the applicants have falsely been implicated in this case. 20 persons were named as assailants, however police filed charge sheet against eight, out of which, one expired during trial. During trial, there appeared no evidence assigning specific role to the applicants and they have been convicted with the aid of Section 149 IPC whereas Section 149 IPC has no application in the present case as the alleged incident took place on the public road outside the house of one of the accused, who died during trial. Several impartial and independent witnesses were withheld by the prosecution despite the fact that their statements under Section 161 CrPC were recorded by the investigating agency and same has been admitted by IO PW.15 Murari Lal. They submit that allegation of causing injury by sword could not be established by the prosecution and weapon of offences i.e., lakdi, lathi, talwar and saria, were not found having any human blood. The appellants were on bail during trial and they have not misused the liberty of bail. In pursuance of directions given by Hon'ble Apex Court, the appellants have surrendered before the trial court in time which shows that they are not at flight risk. It is contended that looking to the large pendency of hearing of criminal appeals, there are bleak chances of disposal of the appeal in near future.

4. Per contra, learned Public Prosecutor and learned counsel for the complainant oppose the present applications. It is argued that the learned trial court has rightly appreciated the evidence and material available on record and passed well-reasoned judgment of conviction and sentence. It is submitted that number of persons launched attack and therefore, specific role cannot be attributed to each assailant. The deceased sustained 20 injuries

in which, five were grievous in nature. Besides this, PW.1 Ajay, PW.2 Kadya and PW.3 Laxman also received simple and grievous injuries in the incident, which is evident from the evidence of PW.11 Dr. Devi Sahay. It is also argued that law of vicarious liability under Section 149 IPC is crystal clear that even presence in unlawful assembly, but with active mind, to achieve common object, makes such person vicariously liable for acts of unlawful assembly. The appellants have also previous criminal antecedents. With these submissions, they pray for dismissal of the present applications for SOS.

5. We have heard and considered the submissions advanced by learned counsel representing both the sides and perused the material available on record.

6. The first application for suspension of sentence was accepted vide order dated 30.01.2023 and after considering the submissions, advanced on behalf of the complainant side, same has been quashed and set aside by Hon'ble Apex Court. Considering the submissions advanced by learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant and after going through the material available on record and the impugned judgment of conviction and sentence, we are not inclined to accept the applications for suspension of execution of sentence. The testimonies of the injured witnesses and the evidence of the medical experts are against the appellants and do not favor their case. Prima facie, there is nothing palpable on record to indicate that the accused had a fair chance of overturning the conviction. Law is well settled that the appellate court should not re-appreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Hon'ble Supreme Court has also quashed and set aside the order dated 30.01.2023 and directed to surrender them before the learned trial court. We also do not find any change in circumstances or good grounds so as to accept present applications.

7. In Omprakash Sahni v. Jai Shankar Chaudhary and another : (2023) 6 SCC 123, Hon'ble Supreme Court has given following

observation on the scope of Section 389 of the Cr.P.C.:-

"23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not re-appreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

8. Thus, these second applications for SOS are dismissed. Registry is directed to prepare paper book forthwith. Counsel for the appellants may also prepare mini paper book and place on record.

9. List the appeal for final hearing as soon as paper book is prepared.”

4. We have heard counsel for the parties and perused the record.

5. Considering the facts and circumstances of the present case and also considering the fact that the second suspension of sentence application filed on behalf of the applicants was dismissed by this Court vide order dated 19.09.2025 on merits and there is no change in the circumstances after dismissal of the second suspension of sentence application and looking to the seriousness of the offence(s) against the applicants, in our view, no case is made out for allowing this application for suspension of sentence.

6. Hence, this 3rd suspension of sentence application is dismissed.

(ANIL KUMAR UPMAN),J

(INDERJEET SINGH),J