

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. 2nd Suspension Of Sentence Application
(Appeal) No. 658/2025

in

S.B. Criminal Appeal No. 1500/2021

Mahesh Kumar S/o Shri Yogendra Shah, Aged About 24 Years,
R/o Village Olipur Police Station Runisedpur Distt. Sitamandi,
Bihar At Present Tenant House No. A-45, Mitra Vihar Colony
Police Station Karni Vihar, Jaipur (West) (At Present Confined At
Central Jail Jaipur)

-----Petitioner

Versus

State Of Rajasthan, Through The Public Prosecutor

-----Respondent

For Petitioner(s) : Mr. S.S. Hasan, Senior Advocate with
Mr. Sameer Khan

For Respondent(s) : Mr. Vijay Singh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

08/05/2026

1. This second application for suspension of sentence is preferred in pending appeal, filed aggrieved from judgment dated 31.03.2021 in Sessions Case 32/2019 passed by learned Special Judge (POCSO Act Cases) No.3, Jaipur Metro-I whereby appellant was convicted for offence under Section 376(3) of IPC and sentenced to undergo rigorous imprisonment for 20 years along with fine of Rs. 50,000/-.

2. Learned Senior Advocate appearing 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, in particular victim.

3. Learned Senior advocate while referring to Sections 4 and 6 of the POCSO Act, submitted that the amended provision came into effect on 16.08.2019, whereas in the instant case, FIR was registered on 09.02.2019 for the incident of 09.02.2019. He also submitted that on 09.02.2019, (the date of incident), the unamended provision was in force and the trial court has committed serious error by awarding rigorous imprisonment of 20 years in POCSO case. He further submitted that the period of custody of the petitioner is approximately 8 years and 6 months and the criminal appeal has not been listed so far for hearing before appropriate bench, thus considering the period of custody, the appellant is entitled for bail.

4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted custody certificate and report received from concerned police station and same is taken on record.

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

6. First S.O.S. application of present petitioner was dismissed by this court on 17.05.2023. The maximum sentence awarded to present petitioner is 20 years under Section 376(3) of IPC, which

came into force on 21.04.2018. The date of incident in the instant case is 09.02.2019.

7. The charge framed against the petitioner also reflects that the petitioner was charged under Section 3/4 of the POCSO Act and /alternatively under Section 376(2)(i) of IPC. The minimum sentence under Section 4 of the POCSO Act was 7 years till 15.08.2019 and from 16.08.2019, the provision was amended and minimum sentence was enhanced to 10 years. The maximum sentence remained the same, i.e. imprisonment for life.

8. The material further indicates that Section 376(2)(i) IPC was omitted by Act No. 22 of 2018 w.e.f. 21.04.2018. Thus, the provision under Section 376(2)(i) IPC was not applicable on the date of framing of charge. On 16.05.2019, the charge was framed and subsequently amended on 26.03.2021 and petitioner-accused was charged under Section 376(3) of IPC.

9. The statement of victim was recorded as PW-3 on 26.06.2019 and the charge was amended on 26.03.2021. The trial was concluded before 04.03.2021 and on 04.03.2021 the arguments were heard but judgment was not pronounced on 10.03.2021 and subsequent dates. Ultimately, the charge was amended on 26.03.2021 and without re-summoning the witnesses, on basis of admission of learned PP and learned counsel for accused that they do not want to re-examine and cross-examine any witness, the evidence was not recalled. Ultimately, arguments were heard and judgment was pronounced on 31.03.2021.

10. Having taken note of aforementioned circumstances, when we consider the period of custody in the instant case, then the

period of custody till date is more than 8 years, 5 months and 16 days against the maximum sentence of 20 years. The Criminal Appeal of present petitioner-accused against conviction and sentence is pending before this court since 2021.

11. Having taken note of aforementioned circumstances, in particular the amendment in charge, the framing of charge and further amendment in charge and non-recording of statement, I am of the considered view that this is a fit case to consider release of present petitioner on bail, as there are debatable issue as per law.

12. At this stage, it is not possible for us to express any opinion on merits of the case, but looking to the facts and circumstances of the case, it is a fit case to enlarge appellant on bail, after allowing Suspension of Sentence Application.

13. 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 and the application under Section 430(1) B.N.S.S. is allowed and sentence of appellant accused- **Mahesh Kumar S/o Shri Yogendra Shah**, 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 **17.08.2026** 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/she/they will appear before the trial Court in the month of January of every year till the appeal is decided.

3. That if the applicant(s) changes the place of residence, he/she/they will give in writing his/her/their 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.

14. Misc. Application stands disposed of.

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

(ASHOK KUMAR JAIN),J