

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc Suspension Of Sentence Application No.
796/2025

in

D. B. Criminal Appeal No.184/2025

Vinod Kumar S/o Shree Hiraram, Aged About 38 Years,
Residence Of Bagadi Police Station Laxmangarh, District Sikar
Rajasthan

(At Present In Sub Jail, Fatehpur Shekhawati)

---Accused-Applicant

Versus

The State Of Rajasthan, Through The P.P.

-----Respondent

For Applicant(s) : Mr. Deepak Soni

For Respondent(s) : Mr. Rhishi Raj Singh Rathore, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

16/03/2026

This suspension of sentence application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the accused-applicant (for brevity, "the applicant") alongwith the appeal. The applicant has been convicted and sentenced by the learned Additional Sessions Judge Laxmangarh, District Sikar vide judgment dated 19.03.2025 passed in Sessions Case (CIS No.) 75/2019 as under:-

1. Under Section 302 IPC: Life imprisonment and fine of ₹20,000/-; in default whereof, six months' additional imprisonment.

2. Under Section 326 IPC: Ten years' rigorous imprisonment and fine of ₹10,000/-; in default whereof, two months' additional imprisonment.

3. Under Section 341 IPC: One month's simple imprisonment and fine of ₹500/-; in default whereof, two days' additional imprisonment.

4. Under Section 323 IPC: One year's rigorous imprisonment and fine of ₹1,000/-; in default whereof, five days' additional imprisonment.

All the sentences to run concurrently.

Learned counsel for the applicant submits that the FIR is delayed and it is based on *Parcha Bayan* of the deceased-Sandeep but, there is no medical certificate that he was in fit state of mind and body to make the statement. He further submits that although, the prosecution case was of inflicting stab wounds on the body of the deceased with a knife but, as per the deposition of Dr. Hemant Tak (PW-4)–a member of the Medical Board who conducted the autopsy, the injuries were with blunt weapon. He contends that as per the medical opinion, the injuries were not sufficient in the ordinary course of nature to cause death. He, therefore, prays that the suspension of sentence application be allowed.

Learned Public Prosecutor has opposed the prayer.

Heard. Considered.

The FIR is based on the *Parcha Bayan* of injured–Sandeep while he was admitted in SMS Hospital, Jaipur. Therein, he has specifically alleged that the applicant inflicted knife blows on his stomach. The allegation against the applicant of stabbing the

deceased is also corroborated from the testimony of eye witnesses such as Shri Subhash (PW-2)-brother of the deceased, Shri Subhash @ Vikash (PW-3), Smt. Suman (PW-5) and Smt. Chawli (PW-6)-aunt and grandmother of the deceased respectively, Shri Purshottam (PW-7) and Shri Ratan Lal (PW-8)-the independent eye witnesses. The allegation is medically corroborated as is evident from the testimony of Dr. Hemant Tak (PW-4) who has prepared the Medico Legal Injury Report as also the postmortem report. The injuries were incised wounds and cause of death was opined to be shock (hemorrhagic and hypovolemic) due to excessive bleeding in gastrointestinal tract. Dr. Hemant Tak, vide his letter dated 23.04.2017 addressed to the SHO, Police Station Laxmangarh, District Sikar, has clearly opined that the injuries were caused by the sharp edged weapon and the material on record reflects that the injuries resulted into deep cut in the stomach part of the body of the deceased. On the disclosure statement made by the applicant, a knife-the weapon of offence has been recovered.

Their Lordships have, in the case of **Om Prakash Sahni V/s. Jai Shankar Chaudhary and Another: (2023) 6 SCC 123**, after analyzing a number of judicial precedents proceeded to hold as under:-

“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 above said 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 take 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 reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach”

In the case of **Rajesh Upadhyay V/s. The State of Bihar & Anr.: 2025 INSC 1468**, it was held by the Hon’ble Apex Court as under:-

“It is also the settled principle that the Appellate Court should not reappreciate evidence at the stage of Section 389, CrPC and try to pick some lacunae or loopholes here and there in the case of prosecution. The presumption of innocence of the accused which is a principle applied in criminal jurisprudence, holds good only until the accused is tried. Once the accused is convicted at the end of the trial, the presumption of innocence does not continue.”

In the backdrop of aforesaid precedential law and looking to the nature and gravity of accusation against the applicant, we are not inclined to allow the application.

Accordingly the suspension of sentence application is dismissed.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J

Gourav/15