

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)

No. 996/2025

Hanumanaram Vishnoi S/o Birmaram Vishnoi, Aged About 38
Years, R/o Rawar Ki Dhani, Rawar, Tehsil And Police Station
Bilada, District Jodhpur (At Present Confined In Central Jail,
Jaipur)

-----Petitioner

Versus

Ncb, Through Special Pp

-----Respondent

Connected With

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)

No. 286/2024

Phoosaram S/o Bhagirathram Bishnoi, Aged About 36 Years,
Resident of 159, Dhayalo Ki Dhani, Bishalpur Police Station
Dangiyawas, Tehsil Mandor, District Jodhpur (Raj) At Present
Confined In Central Jail, Jaipur

-----Petitioner

Versus

State Of Rajasthan, Through P.p

-----Respondent

For Petitioner(s)	:	Mr. Birbal Bishnoi
		Mr. Rajveer Singh Gurjar
For Respondent(s)	:	Mr. Tej Prakash Sharma, Spl PP(for
		NCB)
		Mr. Divyanshu Charan

HON'BLE MR. JUSTICE FARJAND ALI

Order

20/04/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicants against the judgment dated 29.04.2022 passed by the learned Special Judge, NDPS Act Cases, Jaipur Metro-I, Jaipur in Sessions Case No. 11/2018, whereby the applicants were convicted under Sections 8/18, 8/25 and 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo maximum punishment of 20 years' rigorous imprisonment along with fine.
2. Applicant Phoosaram was sentenced to 20 years' rigorous imprisonment with fine of Rs. 2,00,000/- under Section 8/18 NDPS Act and Rs. 2,20,000/- under Section 8/29 NDPS Act, with default stipulation of one year's additional rigorous imprisonment on each count.
3. Applicant Hanuman Ram Bishnoi was sentenced to 20 years' rigorous imprisonment with fine of Rs. 2,00,000/- each under Sections 8/18, 8/25 and 8/29 NDPS Act, with default stipulation of one year's additional rigorous imprisonment on each count, along with lesser sentences for allied offences.
4. Briefly stated, the case of the prosecution is that on 20.01.2018, Intelligence Officer Banshi Lal Jat received secret information that the applicants, Phoosaram and Hanumanaram, would be transporting about 10-20 kg of opium in a Tata Truck bearing No. RJ 29 GB 3760 from

Dausa to Jaipur. Acting upon the said information, a team was constituted and on 23.01.2018 at about 9:30 PM, the said truck was intercepted near Rajdhok Toll Plaza, where two persons were found in the vehicle. It is alleged that upon search, one bag containing 09 plastic bottles with 21.100 kg of opium and one packet containing a black solid substance was recovered. The applicants were arrested and the contraband was seized. After investigation, charge-sheet was filed and upon trial, the learned court convicted and sentenced the applicants vide judgment dated 29.04.2022. It is in this backdrop that the present application seeking suspension of sentence during pendency of the appeal has been preferred by the applicants.

5. Learned counsel for the appellants submit that the trial court failed to properly appreciate the legal and factual aspects, resulting in an erroneous finding of guilt. Being the first appellate court, this Court may reappraise the evidence. It is further submitted that as the appeal will take time for disposal, the sentence deserves to be suspended.
6. Learned Special Public Prosecutor has opposed the prayer for suspension of sentence.
7. Heard learned counsel for the parties and perused the material available on record.
8. Upon a meticulous consideration of the rival submissions and a comprehensive perusal of the material available on record, this Court proceeds to examine the prayer for suspension of

sentence within the well-settled parameters governing the exercise of jurisdiction under Section 389 Cr.P.C. (now Section 430 BNSS). It is trite that suspension of sentence post-conviction is not to be granted as a matter of routine, but only upon the Court being satisfied that there exist substantial and compelling reasons which render the continued incarceration unjustified during pendency of appeal. The judicial discretion in this regard is to be exercised with circumspection, particularly where the conviction pertains to grave and serious offences.

9. At the outset, it is noteworthy that the present case arises out of offences under the NDPS Act involving recovery of a **commercial quantity of contraband (approximately 21.100 kilograms of opium)** from a vehicle in conscious possession of the accused persons. The record ,as per learned trial court order, reveals that the entire prosecution case is founded upon a duly authorized search and seizure operation, preceded by specific intelligence input, reduced into writing and acted upon in accordance with statutory mandate. The seizure proceedings were conducted in the presence of independent witnesses, samples were drawn and sealed in compliance with procedure, and the FSL report unequivocally confirms the seized substance to be opium.
10. The learned trial court, upon an elaborate appreciation of both oral and documentary evidence, has recorded a finding

of guilt by holding that the prosecution has succeeded in proving the case beyond reasonable doubt. The testimony of as many as 14 prosecution witnesses, coupled with contemporaneous documentary evidence such as seizure memos, sampling procedure, chain of custody, and scientific examination reports, lends strong corroboration to the prosecution case. Significantly, no material contradiction or infirmity of such magnitude has been demonstrated at this stage so as to prima facie discredit the prosecution version or render the conviction manifestly unsustainable.

11. This Court cannot lose sight of the fact that offences under the NDPS Act are treated with a higher degree of severity owing to their deleterious impact on society at large. The menace of narcotic drugs has been consistently recognized by the constitutional courts as a threat not only to individual health but also to the social fabric and public order. In such cases, the gravity of the offence, the quantity of contraband involved, and the manner of commission assume paramount importance while considering suspension of sentence. The present case, involving commercial quantity, squarely attracts the rigours of strict scrutiny, thereby requiring exceptional circumstances to justify suspension, none of which are discernible herein.
12. It is also pertinent to note that the Hon'ble Supreme Court in ***Budhiyarin Bai vs. State of Chhattisgarh (2022 (4)***

RCR (Criminal) 339)) has categorically held that no leniency should be shown to accused persons found guilty under the NDPS Act, having regard to the serious nature of such offences.

13. In a similar vein, in **Rafiq Qureshi vs. Narcotic Control Bureau, Eastern Zonal Unit, (2019 (6) SCC 4920)** it has been observed that where the quantity of narcotic drugs recovered is much higher than the notified commercial quantity, the same warrants imposition of punishment higher than the minimum prescribed under the Act, thereby underscoring the heightened gravity and reduced scope for leniency.
14. At this juncture, it becomes apposite to advert to the statutory embargo governing grant of bail and suspension of sentence in offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 37 of the NDPS Act, which begins with a non-obstante clause, carves out a clear departure from the general principles governing bail under Section 439 Cr.P.C. (now Section 483 BNSS), and imposes stringent limitations on the exercise of judicial discretion. The provision reads as under:

"Section 37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and

also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.”

15. A plain reading of the aforesaid provision makes it manifest that the legislature has consciously imposed a **statutory bar in negative terms**, thereby mandating that no person accused of offences involving commercial quantity shall be enlarged on bail unless the twin conditions stand satisfied. Firstly, the Public Prosecutor must be afforded an opportunity to oppose the application; and secondly, upon such opposition, the Court must record a satisfaction, based on reasonable grounds, that the accused is not guilty of the alleged offence and is not likely to commit any offence while on bail. It is well-settled that the expression “reasonable grounds” signifies something more than mere prima facie satisfaction and contemplates substantial probable causes for believing that the accused is not guilty. In the absence of either of these conditions being fulfilled, the embargo created by Section 37 operates with full rigour.

16. Further, the legislative intent to restrict liberal exercise of powers in such matters is reinforced by Section 32-A of the NDPS Act, which provides as under:

"Section 32-A. No suspension, remission or commutation in any sentence awarded under this Act.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted."

17. The constitutional validity and scope of the aforesaid provision came up for consideration before the Hon'ble Supreme Court in *Dadu @ Tulsidas v. State of Maharashtra*, wherein it was held that although the legislature is competent to curtail the powers of the executive in the matter of remission and commutation, it cannot completely divest the constitutional courts of their judicial power to suspend sentence pending appeal. Consequently, Section 32-A was declared unconstitutional to the limited extent that it barred the courts from exercising their appellate jurisdiction to suspend sentence, while upholding the restriction insofar as it relates to executive powers.
18. Thus, the legal position that emerges is that while this Court retains the jurisdiction to consider an application for suspension of sentence, such power is to be exercised subject to the stringent limitations engrafted under Section 37 of the NDPS Act. In other words, even at the stage of suspension of sentence, the Court must bear in mind the

legislative mandate and cannot grant relief unless the conditions akin to those contemplated under Section 37 are satisfied.

19. Applying the aforesaid principles to the facts of the present case, this Court finds that the offence involves recovery of **commercial quantity of contraband**, thereby squarely attracting the rigours of Section 37. At this stage, no material has been brought on record which may persuade this Court to form a reasonable belief that the applicants are not guilty of the offence or that they would not indulge in similar activities if enlarged on bail. Consequently, the statutory embargo operates against the applicants, further disentitling them from the discretionary relief of suspension of sentence.
20. It is further well-settled that **suspension of sentence does not obliterate the conviction**, but merely keeps the sentence in abeyance. Therefore, once a competent court has returned a finding of guilt on the basis of cogent evidence, the presumption tilts in favour of the correctness of such finding unless substantial infirmity is demonstrated. In the instant case, the conviction cannot, at this stage, be said to be prima facie erroneous, arbitrary, or perverse so as to warrant interference by way of suspension of sentence.
21. It is also pertinent to observe that the role attributed to the appellants is not peripheral but direct and active, inasmuch

as the contraband was recovered from a vehicle under their control and possession, and the statutory presumptions under Sections 35 and 54 of the NDPS Act operate against them. At this stage, no material has been brought forth to rebut such presumptions even prima facie.

22. In view of the aforesaid discussion, this Court is of the considered opinion that the case does not disclose any exceptional or compelling circumstance warranting suspension of sentence. The evidence on record appears to be substantial and convincing, the offence is grave involving commercial quantity of narcotics, and the conviction recorded by the trial court does not suffer from any apparent illegality or perversity.
23. Accordingly, the application for suspension of sentence filed on behalf of the appellants **stands dismissed**.

(FARJAND ALI),J