

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc Suspension Of Sentence Application No.
1096/2025

in

D.B. Criminal Appeal No.244/2025

1. Nawab Khan S/o Haji Ali Baksh, Aged About 60 Years, Resident Of Village Enchera Police Station Nadbai District Bharatpur At Present R/o House No. 15, Major Banne Singh Colony Khatipura Jaipur Police Station Vaishali Nagar, Jaipur West)
(At Present Confined In Central Jail Jaipur)
2. Ashfaq S/o Nawab Khan, Aged About 20 Years, Resident Of Village Enchera Police Station Nadbai District Bharatpur At Present R/o House No. 15, Major Banne Singh Colony Khatipura Jaipur Police Station Vaishali Nagar, Jaipur West) (At Present Confined In Central Jail Jaipur)

-----Petitioners

Versus

State Of Rajasthan, Through P.P.

-----Respondent

For Petitioner(s)	:	Mr. Madhav Mitra, Sr. Adv. with Ms. Jaya Mitra and Mr. Sharukh Khan
For Respondent(s)	:	Mr. Naresh Kumar Gupta, PP Mr. Gaurav Sharma with Mr. Jitendra Choudhary for Mr. Rajesh Kumar Sharma

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

Order

24/03/2026

This suspension of sentence application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by

the accused-applicants (for brevity, "the applicants") alongwith the appeal. The applicants have been convicted and sentenced by the learned Additional District and Sessions Judge No.6, Jaipur Metropolitan-II vide judgment dated 19.03.2025 passed in Sessions Case No. 3/2025 (CIS No. 10/2023) as under:-

- 1. Under Section 302 read with Section 149 IPC:** Life imprisonment and fine of ₹50,000/-; in default whereof, one month's additional simple imprisonment.
- 2. Under Section 323 read with Section 149 IPC:** Eight months' simple imprisonment and fine of ₹800/-; in default whereof, 8 days' additional simple imprisonment.
- 3. Under Section 341 IPC:** One month's simple imprisonment and fine of ₹500/-; in default whereof, five days' additional simple imprisonment.
- 4. Under Section 148 IPC:** Two year's simple imprisonment and fine of ₹5,000/-; in default whereof, 15 days' additional simple imprisonment.

All the sentences to run concurrently.

Learned Senior Counsel for the applicants, inviting attention of this Court towards the testimony of Sameem Khan (PW-23), Rubina Khan (PW-25) and Mangtu Khan (PW-28), would submit that the same does not inspire confidence as to involvement of the applicants in the alleged offence. He submitted that Sameem Khan has admitted not to have seen the incident. He further contended that injuries on their person could not be explained by the prosecution which creates a doubt as to reliability of the prosecution case. Learned Senior Counsel submitted that the allegation against the applicants is of catching hold of the

deceased whereas, the allegation of inflicting fatal injuries is on co-accused person. He, therefore, prays that the suspension of sentence application be allowed.

Per contra, learned Public Prosecutor, assisted by learned counsel for the complainant, prayed for dismissal of the application.

Heard. Considered.

As per the prosecution case, the incident occurred on account of a property dispute between the parties who are closely related and there was a scuffle in between them on the previous day from the date of incident wherein, the accused party might have received some injuries. However, the material available on record reflects that on the day of incident, i.e., 19.10.2022, the applicants, along with co-accused person, constituting an unlawful assembly and in furtherance of their common object, committed murder of deceased Sameer by inflicting stab wounds with a knife. The allegations are medically corroborated as is reflected from the post-mortem report (Ex.P4) and the statement of Dr. Vikas Soral (PW-5). The weapon of offence, i.e., the knife was also retrieved from the dead body at the time of autopsy. The injured eye-witness namely Smt. Rubina (PW-25)-wife of the deceased, has attributed specific overt act to the present applicants in her testimony. Further, a perusal of the judgment impugned dated 19.03.2025 reflects that the male DNA found on the shirt of the applicant- Nawab Khan and on the knife matched with that of the male DNA of the deceased Sameer.

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 that the High Court is not expected to examine the individual role of the applicants at the time of consideration of the suspension of sentence application in the cases wherein, the conviction is recorded under Section 302 IPC with the aid of Section 149 IPC.

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

Accordingly the suspension of sentence application is dismissed.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J