

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 1476/2025
URN: SOSA / 2905U / 2025

IN

S.B. Criminal Appeal No.1605/2025

Mohammad Najim S/o Shri Gulam Rasool Mohammad, Aged About 23 Years, R/o Village Dheepara Police Station Talgram District Kannoj Uttar Pradesh Presently R/o New Sanjay Nagar Kachhi Basti Bhatta Basti Jaipur (At Present Confined In Central Jail Jaipur)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Mohd. Aslam
For Respondent(s)	:	Mr. Amit Punia, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

02/07/2026

1. Heard learned counsel for the applicant as well as learned State counsel and perused the material available on record.
2. The applicant herein has been convicted for offences punishable under Sections 363, 363/120B, 366A & 366A/120B of IPC and Section 5(I)/6 of Protection of Children from Sexual Offences Act, 2012 vide judgment dated 02.06.2025 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commission for Protection of Child Right Act, 2005, No.3, Jaipur Metropolitan-II in Sessions Case

No.37/2023 and has been sentenced to maximum punishment of twenty years.

3. Learned counsel appearing on behalf of the applicant submits that the applicant has wrongly been convicted by the learned trial Court. Counsel submits that learned trial Court has failed to appreciate the evidence available on record in correct and proper perspective. He submits that at the time of alleged incident appellant was aged about 19 years. Counsel submits that learned trial Court has determined the age of the victim as 17 years on the basis of her birth certificate wherein her date of birth is recorded as 10.10.2005. Counsel submits that the age of the victim is not conclusive as the cross-examination of her father reveals that he got married in the year 2002 and victim was born approximately one year thereafter. It is also evident from the record that victim left her parental home on her own and remained in company of the applicant-appellant. It is submitted that victim willfully developed physical relations with the petitioner. Counsel submits that another co-accused namely Smt. Parveen @ Rubi, who was charge-sheeted and convicted for abetting the offence, has been granted benefit of suspension of execution of sentence by the co-ordinate Bench of this Court. It is submitted that the applicant remained on bail throughout the trial and there is no allegation that he ever misused the liberty of bail or attempted to interfere with the course of justice. Counsel submits that looking to the large pendency of criminal appeals before this Court, there is no immediate prospect of this appeal being heard and disposed of in near future. Counsel further

submits that in these circumstances, it is urged that the execution of sentence imposed upon the applicant deserves to be suspended during the pendency of appeal.

4. Learned State counsel opposes the submissions advanced on behalf of the applicant. He submits that at the time of alleged incident, victim was below 18 years of age, therefore, her consent is immaterial. Counsel further submits that the victim/complainant has duly been informed about hearing of this application for suspension of execution of sentence.

5. Despite information, no one has put in appearance on behalf of the victim/complainant.

6. Upon a consideration of the arguments advanced on behalf of the applicant as well as learned State Counsel and having regard to the facts and circumstances as available on the record including judgment passed by learned trial Court, especially considering the testimony of victim as well as her parents, so also considering the fact that the applicant remained on bail throughout the trial and there is no allegation that he ever misused the liberty of bail or attempted to interfere with the course of justice and looking to the fact that at the time of alleged incident, victim and appellant were of the tender age and large pendency of criminal appeals before this Court, there is no immediate prospect of this appeal being heard and disposed of in near future, this Court is of the considered opinion that the applicant has available to him strong grounds to assail the impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentences awarded to the applicant during

pendency of the appeal.

7. Accordingly, this application for suspension of sentence filed under Section 430 BNSS is allowed and it is ordered that the sentences passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commission for Protection of Child Right Act, 2005, No.3, Jaipur Metropolitan-II vide judgment dated 02.06.2025 in Sessions Case No.37/2023 against the applicant **Mohammad Najim S/o Shri Gulam Rasool Mohammad** shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for his appearance in the Court on 03.08.2026 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

8. The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial Court. In case the said accused-applicant does not appear before the trial Court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

(ANIL KUMAR UPMAN),J