

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. 3rd Suspension Of Sentence Application
(Appeal) No. 2131/2025

in

S.B. Criminal Appeal No. 2321/2023
CNR: RJHC020684842025 | URN: SOSA / 4094U / 2025

Dipendra S/o Shri Chetan Kumar, Aged About 26 Years, Resident
Of Shivad, Thana Chauth Ka Barwada. (At Present Accused
Confined In District Jail, Sawai Madhopur)

-----applicant

Versus

State Of Rajasthan, Through Public Prosecutor

-----Respondent

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

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

07/08/2026

1. The instant 3rd application for suspension of sentence is preferred in pending appeal which was admitted on 29.08.2023 and aggrieved from order of conviction and sentence dated 31.07.2023 in Sessions Case No.03/2020 passed by learned Special Judge (NDPS Act Cases), Sawaimadhapur whereby appellant was convicted for offence under Section 8/15 of NDPS Act and sentenced to RI of ten years with fine.
2. Learned counsel 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.

3. Learned counsel for the applicant submits that the applicant-accused is in custody and, till date, he has undergone more than four years and three months. He submitted that there is no criminal antecedents recorded against the applicant. He further referred the material against the applicant and submitted that applicant has falsely been implicated in the instant case and the applicant has no role in the instant case.

3. Aforesaid contentions were opposed by learned Public Prosecutor.

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

5. The first application for suspension of sentence filed by the present applicant was considered by this Court on 20.10.2023 and, while dismissing the application for suspension of sentence, this Court observed as under:-

Appellant was convicted under Section 8/15 of NDPS Act and further sentenced to undergo rigorous imprisonment of 10 years with fine. The trial court has concluded that appellant was not guilty under Section 16/54 of Excise Act. Further the report indicated that charge-sheet against appellant was filed on 20.05.2020 and at that time, investigation was kept pending against Pappu, Ved Prakash, Daulat, Sonu and Satyanarayan but now charge-sheet is filed against all five persons on 05.08.2023 after concluding investigation. The record further indicated that in present case, no other case was registered against appellant. Police report further indicated that the profession of present appellant was owner of utensil shop. Appellant was on bail during trial.

We have considered the grounds and the documents as referred by learned counsel for appellant.

We have also perused the evidence of witnesses particularly cross-examination as referred by learned counsel for appellant. At this stage, it is not possible for us to express any opinion on merits on the ground including plea of alibi. It is not possible for us to express any opinion on sufficiency of evidence regarding connection between appellant and Sonu because Sonu did not faced the trial with present appellant. We have considered the submissions of learned counsel for appellant particularly in light of CCTV footage and newspaper cuttings available on record. We have also considered his submission that call details are not enough to implicate any person in light of judgment of Hon'ble Supreme Court in case of **Babubhai Bhimabhai Bokhiria and Anr. Vs. State of Gujarat (supra)**. Also perused the evidence on record from interception to drawing of sample by concerned police officer, particularly in light of judgment of Hon'ble Supreme Court in the case of **Simranjit Singh vs. State Of Punjab (supra) and Yusuf @ Asif Vs. State (supra), relied upon Mohan Lal Vs. UOI (2016) 3 SCC 379**. At this stage of consideration of SOS we cannot deal any argument/submission on merit so as to unsettle findings of the court below.

The main issue at the time of consideration of application under Section 389(1) Cr.P.C. is that appellant was found guilty under Section 8/15 of NDPS Act and it was observed by learned trial court that when raid was conducted by police, present appellant was seen running from godown. The trial court in its judgment after considering the evidence concluded that after communication with Sonu the contraband was stored in godown by appellant. No doubt that the evidence of Excise Inspector Dharmendra Kumar (PW-15) was produced by the prosecution to fortify the contention that appellant is not connected with aforesaid/questioned godown. Further, PW-10 Suresh was also produced by the prosecution to prove rent agreement and approved map. All these evidence were produced by the prosecution to clear that appellant is not connected with godown, but there were other evidence on the basis of which the trial court recorded the order of conviction.

Herein this case, three witnesses including present appellant were examined by the defence and we have considered aforesaid defence as well at this stage.

Now, comes the question at this stage when the recovered contraband was 10 quintals 10 Kg then in such a situation, before considering the application under Section 389(1) Cr.P.C., court is duty bound to consider provision under Section 37 of NDPS Act.

The purpose of Section 389(1) Cr.P.C. was considered by Hon'ble Supreme Court in several matters including in the case of **Atul Tripathi Vs. State of UP**

reported in **AIR 2014 SC 3062** wherein while magnifying the requirements of suspension of sentence, the Court laid down the parameters for suspension of sentence and observed that:-

- "a. The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release.
- b. On such opportunity being given, the State is required to file its objections, if any, in writing.
- c. In case the public prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court."

Prior to aforesaid, Hon'ble Supreme Court in case of **Kishori Lal Vs. Rupa AIR 2005 SC 1481** has laid down that appellate Court is under an obligation to objectively assess the case so as to warrant suspension of sentence. The law over the point is quite clear and this Court has to opine and give reasons for allowing the application for suspension of sentence wherein the sentence is 10 years or more.

Hon'ble Supreme Court in the case of **Union of India v/s Ajay Kumar Singh** reported in **2023 SCC OnLine SC 346** observed that-

The High Court had lost sight of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), which itself provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely:

- "(i) the public prosecutor has been given an opportunity to oppose the bail application; and*
- (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail".*

Further, the Court after taking note of Section 37 of the NDPS Act, viewed that no person involved in trade of commercial quantity of narcotics is liable to be released on bail, unless there are satisfactory and reasonable grounds for believing that such person is

not guilty of the said offence and is not likely to commit any offence while on bail.

In view of provision of Section 37 of Cr.P.C. particularly in light of judgment of Hon'ble Supreme Court in the cases of **Union of India v/s Ajay Kumar Singh (supra)**, **Dadu @ Tulsidas Vs. State of Maharashtra (2000) 8 SCC 437**, **State of Kerala Vs. Rajesh (2020) 12 SCC 122**, **Ratan Kumar Vishwas Vs. State of U.P. (2009) 1 SCC 482**, **UOI Vs. Shiv Shankar Kesari (2007) 7 SCC 798** and **UOI Vs. Rattan Malik @ Habu (2009) 2 SCC 624**, I am of considered view that unless there are reasons required consideration to doubt the case of prosecution then the judgments as submitted by learned counsel for the appellants may be helpful otherwise not.

Aforesaid view was further affirmed by Hon'ble Supreme Court in Cases of **UOI vs Prateek Shukla (2021) 5 SCC 430** and **UOI vs Nawaz Khan (2021) 10 SCC 100**.

Having considered the entirety of material including submissions and principle of law laid down by Hon'ble Supreme Court in aforesaid cases, I am of the considered opinion that it is not a fit case to enlarge appellant on bail.

6. The material on record indicate that the applicant has filed SLP (Criminal) No. 52 of 2024 before the Hon'ble Supreme Court and, on 08.01.2024, the same was dismissed as withdrawn. Therefore, the applicant is not entitled to get suspension of sentence on merits. Now comes the period of custody. The applicant had served four years, two months and eleven days as on 10.07.2026, whereas the maximum sentence awarded to the present applicant is ten years. The period of custody is not even 50% of the maximum sentence awarded. Therefore, the ground of custody is also not sufficient to release the applicant on bail.

7. Having considered the entirety of material, I am of the considered opinion that it is not a fit case to enlarge appellant on bail.

8. Hence, the 3rd application for suspension of sentence is hereby dismissed.

9. Misc. application stands disposed of.

(ASHOK KUMAR JAIN),J

24/MONU