

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc Suspension Of Sentence Application (Appeal)
No. 1675/2025

IN
D.B. Criminal Appeal No. 316/2025

Sukhdev Son Of Lalu, Aged About 82 Years, Resident Of Ward
No. 5, Nainwa, Police Station Nainwa, District Bundi. (At Present
Accused Confined At Sub Jail, Nainwa, Bundi)

-----Accused/Applicant

Versus

The State Of Rajasthan, Through P.P.

-----Respondent

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

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

18/03/2026

This suspension of sentence application under Section 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023 has been filed by the accused-applicant (for brevity, 'the applicant') along with the appeal. The applicant has been convicted and sentenced by the learned Additional Sessions Judge, Nainwa, District Bundi vide judgement dated 03.07.2025 in Sessions Case No.229/2021 (Old No.12/13, 792/14) CIS No.229/2021 as under:-

Section 302 read with Section 34 IPC:- Life imprisonment and fine of Rs.5,000/-; in default whereof, three months' additional imprisonment.

Learned counsel for the applicant submits that he has falsely been implicated in this case. He contends that the recovery of *lathi*-the weapon of offence is not proved against him inasmuch as both the panch witnesses to it have turned hostile. He also submits that the witnesses of last seen, i.e., Behru Lal (PW7) and Parvati Bai (PW18) have turned hostile and have not supported the prosecution case. Learned counsel contends that he was on bail during trial and prays that the application be allowed.

Per contra, learned Public Prosecutor, opposing the prayer, prayed for dismissal of the application.

Heard. Considered.

A perusal of the judgement impugned dated 03.07.2025 reflects that after appreciation of the evidence available on record, the finding of guilt of the applicant has been recorded. It was held that there was a land dispute in between the deceased and the applicant and a day prior to the recovery of body of the deceased, a quarrel took place in between the deceased and the accused. It was also held that the body was recovered from the room in the agricultural field of the accused and the slippers and *kurta* of the deceased were recovered from a place in front of the room. The prosecution evidence reflects that there were blood stains at three places outside the room wherein, the body was recovered. As per the Postmortem Report (Ex.P52), the cause of death was head injury on account of blunt weapon and a *lathi*-the weapon of offence, was recovered on the disclosure statement made by the applicant. As per the FSL Report (Ex.P57), the blood grouping on the clothes of the deceased and the *lathi* recovered matched.

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