


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc Suspension Of Sentence Application No.
1859/2025

in

DB Criminal Appeal No. 391/2025

Raja @ Rajaram S/o Tejram, Aged About 32 Years, R/o
Ratnapura, Police Station Sapotara, District Karauli Rajasthan At
Present Confined In Central Jail Bharatpur

----Applicant

Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

D.B. Criminal Misc Suspension Of Sentence Application No.
995/2024

in

DB Criminal Appeal No.192/2024

Banwari Lal Son Of Kadu Ram @ Girraj Prasad, Aged About 28
Years, Resident Of Sheesh Wali Dhani Tan Bilona Police Station
Mandawari, District Dausa (Rajasthan) (Presently Confined In
Central Jail, Bharatpur)

----Applicant

Versus

The State Of Rajasthan, Through P.P

----Respondent

For Petitioner(s)	:	Mr. B.M. Sandu with Mr. Abhimanyu Sandu Mr. Dinesh Kumar Choudhary Mr. Abdul Kamal Khan with Mr. Mukesh Chand Meena
For Respondent(s)	:	Mr. Naresh Kumar Gupta, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

25/03/2026

These suspension of sentence applications under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 have been filed by the accused-applicants (for brevity, "the applicants") along with the appeals.

The applicant-Raja @ Rajaram S/o Tejram has been convicted and sentenced by the learned Sessions Judge, Karauli vide judgment dated 25.06.2025 passed in Sessions Case No.79/2020 (CIS No. 79/2020) as under:-

1. **Under Section 302 read with Section 34 IPC**: Life imprisonment and fine of ₹50,000/-; in default whereof, six months' additional rigorous imprisonment.
2. **Under Section 3/25 of the Arms Act**: Three years' rigorous imprisonment and fine of ₹10,000/-; in default whereof, one month's additional rigorous imprisonment.

All the sentences to run concurrently.

The applicant-Banwari Lal S/o Kadu Ram @ Girraj Prasad has been convicted and sentenced by the learned Sessions Judge, Karauli vide judgment dated 02.04.2024 passed in Sessions Case No.79/2020 (CIS No. 79/2020) as under:-

1. **Under Section 302 read with Section 34 IPC**: Life imprisonment and fine of ₹50,000/-; in default whereof, six months' additional rigorous imprisonment.

Learned counsels for the applicants submitted that the learned trial Court has erred in relying upon the testimony of Mohan Lal (PW-3) as the witness of last seen whereas, his deposition reflects that he was an accomplice himself. They further submitted that the prosecution could not establish that the hut, where Mohan Lal has claimed to have seen the deceased last in

the company of the applicants, belonged to the applicant- Raja @ Rajaram as claimed. Inviting attention of this Court towards the testimony of Luvkush son of Shri Bharat Lal (PW-5), they would contend that he has stated that both the applicants had gone together to the hut from where the *Katta* as well as the master key- the weapon of offence, were recovered but, their seizure memos have been prepared on different dates, i.e., 20.06.2020, 21.06.2020 respectively which create a doubt as to veracity of the prosecution case. They contended that in absence of blood grouping, mere presence of blood on their clothes and shoes was not sufficient to connect them with the alleged offence. They, therefore, prayed that the suspension of sentence applications be allowed.

Per contra, learned Public Prosecutor, opposing the submission, submitted that the testimony of Mohan Lal (PW-3) as the witness of last seen was creditworthy which stood corroborated from the site plan (Ex.P3). He, therefore, prayed for dismissal of the applications.

Heard. Considered.

A perusal of the judgment impugned reflects that relying upon the testimony of Mohan Lal (PW-3) as the witness of 'last seen', it was held by the learned trial Court that the deceased was seen last in the company of the accused-applicants. After carefully examining the testimony of Mohan Lal, we do not find it to be suffering from any such infirmity so as to doubt his credibility, at least at this stage. We further find that his testimony that the applicants were preparing dinner along-with co-accused when he

reached the hut with the deceased, stood corroborated from the site plan(Ex.P-4)

As per the postmortem report, (Ex.P-19) which was proved by Doctor Lakhan Lal Meena (PW-7), the deceased had received a large number of punctured wounds on various body parts including vital parts and cause of death was hemorrhagic shock on account of multiple injuries on his head, neck and chest. The weapon of offence, i.e. the master key was recovered on the disclosure statement made by the applicant-Banwari Lal. A Katta (country made pistol) was also recovered from possession of the applicant-Raja @ Rajaram, who has also been convicted under Arms Act. As per the FSL report, human blood was found on the shoes of the applicant-Banwari Lal as also on the master key.

Their Lordships of Hon'ble Supreme Court 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 conspectus of aforesaid precedential law and in view of nature and gravity of accusation against the applicants, we are not inclined to allow the suspension of sentence applications.

The suspension of sentence applications are dismissed accordingly.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J