

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal 2nd Misc Suspension Of Sentence Application
(Appeal) No. 2067/2025

In

S.B. Criminal Appeal No.3328/2024

Monu @ Taplu S/o Rajendra Singh, Aged About 24 Years, R/o Kurthla Thana Sadar Nuh District -Nuh Mewat. (At Presently Confined In Jail District Alwar).

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Petitioner(s)	:	Mr. S.S. Raghav Mr. Anirudh Singh Raghav
For Respondent(s)	:	Mr. Rajendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

11/02/2026

1. The instant 2nd SOS application is preferred by the appellant aggrieved from judgment of conviction and sentence dated 02.12.2024 in Sessions Case No.32/2024 passed by learned Special Judge, POCSO Act Cases, No.1, Alwar, whereby appellant-accused **Monu @ Taplu** was convicted and sentenced under Sections 363, 366 and 376(2)(n) of IPC and Section 5(I)/6 of POCSO Act. The maximum sentence awarded is 20 years.
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 appellant submits that first S.O.S. application of appellant was dismissed on 16.04.2025 and since then the appellant is in custody and there are no chances of consideration of appeal on merits. He further submitted that till date appellant has undergone more than one year and eight months against awarded sentence of 20 years. He further submitted that the material on record indicate that the age of victim is about 16 years and she is a well-grown female who was having an affair with appellant. He also submitted that medical report clearly indicated that there were no injuries either on the body or genital of the victim. He also referred the statement of victim and submitted that the clothes were washed and not handed over, thus there is no corroboration of rape.
4. He further referred the findings recorded by the trial court and submitted that the trial court has committed serious error while convicting the appellant under Section 5(I)/6 of POCSO Act, as there is no evidence about use of force or any other ingredient to bring this case within definition of Section 5 of POCSO Act. He further referred the evidence of victim and submitted that she is neither trustworthy nor reliable

and solely on the basis of her testimony a conviction order cannot be passed by the trial court.

5. He further placed reliance upon order dated 12.01.2026 in S.B. Criminal Miscellaneous Writ Petition No. 88/2026 titled as **Aryan vs. State of Rajasthan and Others** and submitted that while considering judgment in case of **State of UP vs. Anirudh and Another, SLP (Criminal) No. 10656/2025 decided on 09.01.2026**, Hon'ble Court has observed the need to bring in Romeo-Juliet clause exempting genuine adolescent relation with the strong hold of POCSO Act. He further submitted that the present appellant was on bail during trial and he has not misused the liberty granted to him but disposal of criminal appeal will take time. He further submitted that victim has again eloped with another person and father of victim has registered another FIR against another person.
6. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted custody certificate and same is taken on record.
7. Heard learned counsel for appellant and learned Public Prosecutor. Perused the record.
8. The first S.O.S. application was considered by this Court while admitting criminal appeal against judgment of conviction and sentence dated 02.12.2024. While deciding first S.O.S. application on 16.04.2025, we have observed as under:
 5. On basis of report Ex.P-11 filed by uncle of victim, elopement of victim on enticement of appellant accused, FIR No.333/2023 was

registered at Bagad Tiraha, District Alwar on 20.12.2023. During investigation, victim was recovered on 18.01.2024 and her statement under Sections 161 and 164 CrPC were recorded. Victim was medically examined and report Ex.P-2 was prepared. The victim has refused to deliver garments to police. The appellant accused was arrested on 20.01.2024. After investigation, charge-sheet has been filed against the appellant accused. During trial, the appellant accused was released on bail in pursuance to order dated 03.07.2024 in Bail Application No.5614/2024. After framing the charge, 17 witnesses were examined by prosecution and 25 documents were exhibited by prosecution. The appellant accused was examined under Section 313 CrPC and examined DW-1 Vinod as defence witness. Also exhibited Ex.D-1 in defence. After considering the material on record, the appellant-accused was acquitted from charge under Section 506 IPC but convicted under Sections 363, 366, 376(2)(m) IPC and Section 5(I)/6 of POCSO Act. The maximum sentence awarded to the present appellant is 20 years.

6. After considering the statement of PW-3 Bharat Lal and documents Ex.P-9 to P-10 and Ex. P-5, the trial court has determined the date of birth of victim as 12.07.2007. The date of elopement is 19.12.2023. Thus, the age of victim is 16 to 18 years. As per date of birth, the victim was minor on the date of incident.

7. After recovery, her statement under Section 161 CrPC was recorded and same was exhibited as Ex.D-1. The statement of victim under Section 164 CrPC was recorded and same is exhibited as

Ex.P-4. Victim was medically examined on 20.01.2024 and a report Ex.P-2 is exhibited by PW-9 Dr. Ambika Patel. Victim was examined as PW-1 before the trial court. The victim has alleged that appellant accused has committed rape with her as she was kept in a room for more than a month.

8. We have gone through the cross-examination of victim and also compared the statements of victim recorded under Section 164 CrPC on 17.05.2024 and statement under Section 161 CrPC exhibited as Ex.D-1. Victim has improved from her statement under Section 161 CrPC but same is not a statement on oath. In medical of victim, nothing was found. The Investigating Officer was examined as PW-16 whereas landlord of house where a boy and a girl resided for one month was examined as PW-17. We have gone through the statement of all witnesses and also considered the defence evidence of DW-1 Vinod.

9. The appellant accused was released on bail during trial but victim has made allegation against the appellant in her statement under Section 164 CrPC which was recorded just after the recovery and same statement was explained before the Court. The victim is a minor girl and less than 18 years of age, so her consent is immaterial in the instant case.

9. A coordinate bench of this Court, considering S.B. Criminal Miscellaneous Petition No. 88/2026 arising out of FIR No. 169/2025 registered at PS Kaladera, Jaipur (Rural) has quashed criminal proceedings under Section 528 of BNSS on the ground that sessions case was registered at the instance

of victim and her brother, but during investigation the victim has not made any allegation in her statement recorded under Sections 180 and 183 of BNSS about allegation of sexual activity or abuse against the applicant (accused).

10. Moreover, the victim and her brother through counsel have conceded that the miscellaneous petition under Section 528 of BNSS be accepted and proceedings be quashed thus, the order dated 12.01.2026 is passed after consent of all parties, which includes State of Rajasthan.
11. The observation in case of Aryan (*supra*) by a coordinate bench clearly indicate that without any material, a charge sheet has been filed under Sections 3/4 of POCSO Act and the trial court has framed charges, which were considered in para Nos. 9 and 10 of order. Here in this case, not a single admission of victim about consenting relation, rather victim has made allegation in her statement before the trial court and on basis of said deposition, appellant was convicted by the trial court. Thus, the issue mentioned in case of **Aryan (*supra*)** has nothing to do with the present case.
12. As regard to object behind enactment of POCSO Act is concerned, the Statement of Objects and Reasons clearly indicate that the Protection of Children from Sexual Offences Act, 2012 was enacted by the Parliament. The Act clearly defines children as any person below the age of 18 years and provides for punishment commensurating with the gravity of the offence. The Act was later amended in 2019 to introduce more stringent penal provisions. The POCSO Act does not exceptionally define the term "consent" and under

the statutory framework, any consensual act involving a person below 18 years of age is treated as an offence, irrespective of whether consent was purportedly given.

13. We are a Constitutional Court, but while considering the bail application or S.O.S. application, we are governed by the provisions of BNSS, 2023 (corresponding provisions of Code of Criminal Procedure). We may have our own ideology, but same cannot be imposed against the provision of law.
14. A recent statement made by Hon'ble Minister for Women and Child Development in Lok Sabha clearly indicate that any dilution of age of consent or introduction of exceptions would undermine child safety, increase risk of exploitation and weaken India's commitment to the protection of children substantially, specifically adolescent girls.
15. It is sufficient to understand the intention of the Union of India from the statement made by Hon'ble Minister. The counsel for petitioner cannot claim bail on the basis of certain observations made in the case of Aryan (supra). No doubt about a fact that victim and the petitioner are of young age but if an act is punishable under the law, mean they should refrain from committing an offence.
16. We have considered the merits of the case and we do not find appropriate to re-discuss again. The grounds raised by learned counsel can be considered at the time of final adjudication, but not at this stage. Similarly, the total period of custody is also one year, eight months and five days, and same is also not sufficient to consider S.O.S. application on ground of long incarceration.

17. Since High Court is working on two Saturdays in a month and primarily this is to clear the backlog which includes consideration of matters, wherein the accused are languishing in jail. If the case of petitioner is so strong, then the counsel may apply to fix this appeal for consideration on merits on any Saturday. The government counsels are already available, therefore the matter can be taken up at earliest. The petitioner cannot take this argument that his case will not be considered in the near future.
18. Accordingly, SOS application preferred by appellant **Monu** is hereby dismissed. Misc. Application stands disposed of.
19. List Criminal Appeal in the month of March, 2026.

(ASHOK KUMAR JAIN),J