

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 2090/2025
In

S.B. Criminal Appeal No. 559/2022
CNR: RJHC020896872025 | URN: SOSA / 4017U / 2025

Dashrath @ Pappu Singh Son Of Dhan Singh, Resident Of Plot
No. 33, B Block, Anand Vihar, Near Chandralok Hotel Ram Kishan
Ke Karhaney Ke Peechhey, Police Station Kotwali, Tonk
(Rajasthan) (Presently Serving Sentence In District Jai, Tonk)
-----Petitioner

Versus
State Of Rajasthan, Through P.p.
-----Respondent

For Petitioner(s)	:	Mr. Sunil Tyagi
For Respondent(s)	:	Mr. Shree Ram Dhakar, PP Mr. Buddhi Prakash Meena

**HON'BLE MR. JUSTICE FARJAND ALI
(THROUGH VIDEO CONFERENCING)**

Order

12/08/2026

1. The instant 4th application for suspension of sentence has been moved on behalf of the applicant in the matter of judgment dated 30.03.2022 passed by the learned Special Judge, POCSO Act Cases, Tonk, District Rajasthan in Sessions Case No. 61/2020 whereby he was convicted and sentenced to suffer maximum imprisonment of 20 years RI along with a fine of Rs. 50000/- under Section 376(1)(a), (b) and 376(2)(f) of IPC and punishment for the other offences under Section 376(n) of IPC and Section 5(m)(n)(I)/6 of POCSO Act.
2. It is contended by the learned counsel for the appellant that the learned trial Judge has not appreciated the correct, legal and

factual aspects of the matter and thus, reached at an erroneous conclusion of guilt, therefore, the same is required to be appreciated again by this court being the first appellate Court.

3. Per contra, learned public prosecutor has vehemently opposed the prayer made by learned counsel for the accused-applicant for releasing the appellant on application for suspension of sentence.

4. Heard learned counsel for the parties and perused the material available on record.

5. There exists a fine yet significant distinction between the grant of bail under Section 439 of the Code of Criminal Procedure, 1973(corresponding to Section 483 of BNSS), and the suspension of sentence under Section 389 CrPC (corresponding to Section 430 of BNSS). While the power exercised under Section 439 CrPC is essentially discretionary in nature and operates at the pre-conviction stage, the jurisdiction under Section 389 CrPC, though also discretionary, is qualitatively different and operates post-conviction. Under Section 389 CrPC, the appellate court is vested with a distinct authority; however, the core consideration before the appellate forum must necessarily be whether the judgment of conviction and the consequent order of sentence are sustainable in the eyes of law.

6. It is trite that the presumption of innocence, which enures in favour of an accused, comes to an end upon conviction. Consequently, while considering an application under Section 389 CrPC, the appellate court is required to examine the grounds raised in the appeal, and for such purpose, the oral and

documentary evidence must be looked into. Where, upon appreciation of evidence, it appears that the conclusions drawn by the trial court may be erroneous, and where logical, legal and sustainable arguments are advanced assailing the findings, disclosing a strong and arguable case, the appellate court is duty-bound to consider such contentions.

7. Where the sustainability of the conviction itself becomes debatable, and where the grounds raised in appeal, if adjudicated in favour of the appellant, disclose a real and substantial possibility of success, and where, prima facie, it appears that the conviction may be reversed and the appellant may be acquitted, the appellate court ought to suspend the sentence pending disposal of the appeal.

8. Such discretion deserves to be exercised with greater circumspection in cases where the appellate forum has sufficient reason to believe that the appeal is not likely to be taken up for hearing in the near future. In such circumstances, the court is required to assess whether the grounds raised are not merely ornamental but possess real substance and force, for the simple reason that if the appeal ultimately succeeds, the period of incarceration already undergone cannot be undone or restituted. In such a situation, the court should incline towards suspending the sentence.

9. At the same time, it is well settled that the appellate court is not required to record any definitive or conclusive finding, as doing so would amount to forming a pre-determined opinion on the merits of the appeal at an initial stage, without affording a full

hearing on the appeal itself. It is sufficient if the court merely indicates that the grounds raised are prima facie appreciable, logical and legally tenable, that they are founded upon settled principles of law, and that there appears to be improper evaluation or assessment of evidence, or non-consideration / disregard of relevant statutory provisions.

10. It is also to be borne in mind that in several cases, the conviction may ultimately be converted to a lesser offence, or the propriety of the sentence imposed by the trial court, being within its discretionary domain may also require reconsideration, particularly whether an adequate and proportionate sentence was imposed after due hearing on the point of sentence. These aspects, too, are open to re-examination at the appellate stage.

11. An appeal, in its true sense, is an extension of the trial, for the reason that additional evidence may be taken, and the entire body of evidence is subject to re-appreciation on both factual and legal parameters. At this stage, the appellate court is empowered to set aside the conviction, modify it, remand the matter, or maintain the judgment, as the case may be.

12. In this High Court, thousands of criminal appeals have remained pending for the last 20–30 years, including jail appeals, where even the likelihood of early hearing does not appear forthcoming. In such matters, instead of taking an irreversible risk, the court must proceed on the safer side by placing paramount importance on human dignity and personal liberty.

13. Upon a prima facie consideration of the matter, this Court finds the case to be an arguable one. Of particular significance is

the fact that the victim herself has appeared before this Court and is present in Court, accompanied by her mother. They have expressed their unwillingness to pursue any action against the petitioner and are inclined to resile from the allegations. At this stage, this Court is consciously not entering into or recording any finding on the substance of their proposed resiling, which shall be considered at the appropriate stage.

13.1 I have gone through the statement of the victim recorded on oath during the course of trial as PW-7. It is borne out from the record that, before commencing her examination, the learned Presiding Judge, after satisfying himself that the victim understood the nature and consequence of her deposition and was well oriented to the time and place, further found her to be free from any influence, coercion or undue pressure and capable of giving her statement voluntarily. Her examination-in-chief was accordingly commenced. Upon being examined, the victim stated that a quarrel had taken place between her mother and father, during which her father had beaten her mother and his children. She further stated that, being irked by the said incident, her mother had gone to lodge the FIR. However, when confronted with her previous statement and upon being cross-examined by the learned Public Prosecutor, she denied the allegations of rape. Significantly, at certain other places, upon being confronted with her previous statements, she did make allegations suggesting that she had been subjected to rape. Thus, the testimony of the victim, on a careful reading, presents two apparently divergent facets. On the one hand, she has resiled from and denied the allegations of

rape, whereas, at certain places, she has reiterated or made statements containing allegations of sexual assault. Such testimony cannot be accepted or discarded in its entirety merely on account of the apparent inconsistency. The Court is, therefore, required to undertake a careful, cautious and close scrutiny of her entire deposition, juxtaposed with her previous statements and the other evidence available on record, so as to ascertain which part of her testimony inspires confidence and carries the ring of truth and which part appears to be an embellishment, exaggeration or otherwise unreliable. The endeavour of the Court must be to separate the grain from the chaff and to arrive at the truth on the basis of the evidence as a whole. The oral testimony available on record does not, at this stage, appear to operate against the petitioner in its entirety. The conviction appears to have substantially rested upon indirect evidence, rather than upon direct and unimpeachable ocular testimony. In such circumstances, the matter certainly calls for a closer re-appraisal at the appellate stage. Keeping in view the cumulative effect of the aforesaid circumstances, this Court is of the view that the petitioner has made out a case for grant of suspension of sentence.

13.2 The questions relating to the manner and source of collection of the evidence, its proper preservation, maintenance of its integrity and sanctity, protection thereof from any possibility of manual intervention or alteration, as also the errors, if any, committed in appreciation and evaluation of the evidence by the learned trial Court, are matters which require fresh and closer

consideration. These aspects shall appropriately be examined at the time of final hearing of the appeal.

13.3 All the issues raised are vital in nature and carry sufficient force and substance, such that if they are adjudicated in favour of the appellant, the possibility of acquittal cannot be ruled out. The grounds raised are appreciable and necessitate definitive adjudication, which would require meticulous examination and re-appreciation of evidence, and there exists a reasonable possibility that such exercise may ultimately ensure to the benefit of the appellant.

14. Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentence passed by learned trial court, the details of which are provided in the first para of this order, against the appellant-applicant named above 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.50,000/-with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge 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.

15. 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.

(FARJAND ALI),J