

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc II Suspension Of Sentence Application
(Appeal) No. 2328/2025

Mahendra Singh Urf Polya S/o Shri Gopal, Aged About 21 Years,
Budol, Police Station Gegal, District Ajmer (Raj). (At Present
Accused Confined In Central Jail Ajmer).

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Petitioner(s)	:	Mr. Rahul Agrawal
For Respondent(s)	:	Mr. Sudesh Saini, AGA Mr. Gaurav Gupta, Asst. G.A.

HON'BLE MR. JUSTICE FARJAND ALI

(Through Video Conferencing)
Order

23/02/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicant in the matter of judgment dated 07.01.2021 passed by the learned Special Court, POCSO Act, 2012, Ajmer in Sessions Case No. 33/2019 whereby he was convicted and sentenced to suffer maximum imprisonment of ten years' rigorous imprisonment along with a fine of Rs.10,000/-, in default of payment of fine to further undergo two months' simple imprisonment, for the offences under Section 377 IPC and Section 5(M)/6 of the Protection of Children from Sexual Offences Act, 2012, and further sentenced to seven years' rigorous imprisonment with a fine of Rs.5,000/-, in default to further undergo one month's

simple imprisonment, for the offence under Section 363 IPC, and to one year's rigorous imprisonment with a fine of Rs.1,000/-, in default to further undergo fifteen days' simple imprisonment, for the offence under Section 342 IPC.

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, and the suspension of sentence under Section 389 CrPC. 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. In the present case, it is not in dispute that the appellant was about 21 years of age at the relevant time and has remained incarcerated for a period of approximately seven years out of the total sentence of ten years, with no previous criminal antecedents reported against him. Having regard to the fact that the appeal is not likely to be taken up for final hearing in the near future, the period of custody already undergone assumes significance. The Hon'ble Supreme Court in ***Saudan Singh v. State of Uttar Pradesh*, [2021 SCC OnLine SC 3259]**, has emphasized that prolonged incarceration during pendency of appeal is a relevant and weighty consideration for suspension of sentence, particularly where a substantial portion of the sentence has already been served and the delay in disposal is not attributable to the convict. These aspects, cumulatively considered, warrant careful consideration at the appellate stage. 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.

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

Pramod/26