

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Second Suspension Of Sentence Application
(Appeal) No. 2448/2024

IN

S.B. Criminal Appeal No.54/2024

Kalim @ Alim S/o Shoraj, Aged About 33 Years, R/o Village Ali-
garh (Gundbas) P.s. Hasarpur, District Palwal Haryana (Presently
Lodged In Central Jail Alwar Rajasthan)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor.

----Respondent

For Petitioner(s)	:	Mr. Swadeep Singh Hora with Mr. Aamir
For Respondent(s)	:	Mr. N.S. Dhakar, PP with Mr. M.S. Shekhawat, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

09/12/2025

1. Heard learned counsel for the applicant-appellant and learned State counsel on the second application for suspension of execution of sentence.
2. The applicant-appellant herein has been convicted for offences punishable under Sections 363, 366A & 376D of IPC and Section 5(g)/6 of POCSO Act, 2012 vide judgment dated 08.11.2023 passed by learned Special Judge, Special Court, Protection of Children from Sexual Offences Act, 2012 & Commission for Child Rights Protection Act, 2005, No.3, Alwar (Raj.) in Sessions Case No.37/2021 (CIS No.177/2021) and has been sentenced to maximum punishment of twenty years.
3. Vide order dated 11.09.2024, first application filed by the applicant-appellant for suspension of execution of sentence was

dismissed as withdrawn by this Court. Now, this second application for suspension of execution of sentence has been preferred.

4. Learned counsel for the applicant-appellant submits that applicant-appellant has wrongly been convicted by the learned trial Court. Counsel submits that learned trial Court has failed to appreciate the evidence available on record in correct perspective. Counsel argues that there is a complete absence of any evidence on record which could be made to connect the applicant with the alleged offence. It is further highlighted that the applicant was a stranger to the victim and yet the Investigating Agency did not conduct the test identification parade to verify the identification made by the victim. The trial Court also failed to take necessary precautions during the proceedings, as other persons were not allowed to stand in the dock while the victim testified against the applicant, calling into question the veracity of the identification. Counsel also refers to the fact that the victim was unable to identify the place where the alleged rape took place which raises questions of the reliability and credibility of the prosecution's case. Counsel draws attention of this court towards the testimony of PW27, Gulfam, who stated that the victim had approached him expressing her desire to marry on account of unhappiness with the parents. This statement suggests alternative motives and circumstances that may undermine the prosecution's narrative. It is contended that the trial Court grossly erred in convicting the applicant-appellant under section 376D of IPC as the offence alleged to have been committed was a single act and no other

accused was involved in it. It is submitted that similar situated co-accused person namely Najim has been acquitted by the learned trial court against whom allegations were levelled by the same victim. However, said accused was tried separately. Counsel submits that the prosecution case also gets weakened because there is no corroborative evidence to support the allegations made by the victim. It is also submitted that the victim was allegedly subjected to sexual intercourse shortly after the delivery (abortion) of the child. During the course of the medical examination, the doctor found a foul-smelling vaginal discharge, which again raises serious questions about the credibility of the rape allegations under such circumstances. Furthermore, it is submitted that the applicant-appellant has already undergone approximately 53 months of incarceration, including the benefit of remission. Despite filing an application for early hearing of the appeal, same has been declined, resulting in no immediate prospect of expeditious hearing or disposal of the appeal. Considering all these factors, it is urged that the second application for suspension of execution of sentence may be considered liberally. It is submitted that looking to the large pendency of criminal appeals before this Court, there is no immediate prospect of this appeal being heard and disposed of in near future.

5. Learned State counsel opposes the submissions made by counsel for the appellant. He submits that learned trial Court has not erred in convicting the applicant-appellant. He further submits that victim/complainant has duly been informed about hearing of

this second application for suspension of execution of sentence.

6. Despite information, no one has put in appearance on behalf of victim/complainant.

7. Upon a consideration of the arguments advanced on behalf of the appellant as well as learned State Counsel and having regard to the facts and circumstances as available on the record including judgment passed by learned trial Court and further considering the period of incarceration suffered by the applicant-appellant which is almost 53 months and there is no immediate prospect of this appeal being heard and disposed of in near future, this Court is of the opinion that the appellant has available to him strong grounds to assail the impugned judgment of conviction and sentence. Thus, it is a fit case for suspending the sentences awarded to the applicant-appellant during pendency of the instant appeal.

8. Accordingly, this second application for suspension of sentence filed under Section 430 BNSS is allowed and it is ordered that the sentences passed by the learned Special Judge, Special Court, Protection of Children from Sexual Offences Act, 2012 & Commission for Child Rights Protection Act, 2005, No.3, Alwar (Raj.) vide judgment dated 08.11.2023 in Sessions Case No.37/2021 (CIS No.177/2021) against the applicant-appellant **Kalim @ Alim S/o Shoraj** shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he execute a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for his appearance in this court on 15.01.2026

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.

9. 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.

(ANIL KUMAR UPMAN),J