



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 279/2026

CNR: RJHC010137272026 | URN: SOSA / 544U / 2026



1. Sukhdev Singh S/o Baba Singh, Aged About 62 Years, Village 6 Msr Police Station Anoopgarh District Shri Ganga Nagar Rajasthan
2. Kuldeep Singh S/o Sukhdev Singh, Aged About 41 Years, Village 6 Msr Police Station Anoopgarh District Shri Ganga Nagar Rajasthan
3. Butta Singh S/o Sukhdev Singh, Aged About 32 Years, Village 6 Msr Police Station Anoopgarh District Shri Ganga Nagar Rajasthan

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. Durgesh Khatri
For Respondent(s) : Mr. N.S. Chandawat, Dy. GA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

05/10/2026

1. The instant application for suspension of sentence has been moved on behalf of the applicants in the matter of judgment dated 27.01.2026 passed by the learned Additional Session Judge No. 1, Anoopgarh District Sriganganagar in Sessions Case No. 16/2013 whereby they were convicted and sentenced to suffer maximum imprisonment of 10 years along with a fine of Rs 20,000/- under Section 307 IPC and



lesser punishment for the other offences under Sections 323/34,324/34,325/34,326/34 of IPC.

2. Learned counsel for the appellants submits that the trial court failed to properly appreciate the legal and factual aspects, resulting in an erroneous finding of guilt. Being the first appellate court, this Court may reappraise the evidence. It is further submitted that the appellants remained on bail during trial without misuse of liberty, and as the appeal will take time for disposal, the sentence deserves to be suspended.
3. Learned Public Prosecutor has opposed the prayer for suspension of sentence.
4. Heard learned counsel for the parties and perused the material available on record.
5. The distinction between grant of bail under Section 439 CrPC (corresponding to Section 483 BNSS)and suspension of sentence under Section 389 CrPC (corresponding to Section 430 BNSS)is well settled. While the former operates at the pre-conviction stage, the latter comes into play post-conviction and requires the appellate court to assess, prima facie, the sustainability of the conviction and sentence under challenge.
6. Upon conviction, the presumption of innocence stands displaced; however, while considering suspension of sentence, the appellate court is required to evaluate whether the grounds raised in appeal disclose a substantial and arguable case. If the material on record suggests that the



findings of the trial court may be debatable, the discretion under Section 389 CrPC (corresponding to Section 430 BNSS) can be justifiably invoked. Where the appeal raises issues which, on prima facie consideration, indicate a reasonable possibility of success, including reversal or modification of conviction, the sentence may be suspended pending adjudication.

7. This Court is guided by the enunciation of law by the Hon'ble Supreme Court in ***Muna Bisoi v. State of Odisha (February 16, 2026)*** , wherein it has been held that prolonged pendency of criminal appeals, not attributable to the convict, constitutes a valid ground for suspension of sentence. Reliance has also been placed on ***Kashmira Singh v. State of Punjab (1977) 4 SCC 291*** , wherein the Supreme Court deprecated continued incarceration of convicts for long periods during pendency of appeals, observing that such practice would amount to a travesty of justice.
8. It is equally settled that while considering such application, the appellate court is not required to record conclusive findings on merits, as that would prejudice the final adjudication. A prima facie satisfaction regarding the arguability and substance of the grounds would suffice. The appellate jurisdiction being a continuation of trial, the entire evidence remains open to re-appreciation. The court may ultimately affirm, modify, or set aside the conviction, or alter



the sentence, depending upon the outcome of such re-evaluation.

9. Additionally, even where conviction is sustained, the nature of offence or quantum of sentence may warrant reconsideration at the appellate stage, which further justifies a liberal approach in appropriate cases. This Court cannot lose sight of the fact that it is burdened with a large number of pending criminal appeals, and the likelihood of their early disposal remains uncertain. In such circumstances, continued incarceration, despite arguable grounds in appeal, would not be justified, particularly when delay is not attributable to the appellant.
10. In the present case, a careful prima facie consideration of the material available on record reveals certain circumstances which weigh in favour of the appellants. During the course of trial, the appellants remained on bail and there is nothing on record to indicate that the liberty so extended to them was ever misused or that any complaint in this regard was made. Their conduct during the trial, therefore, does not disclose any circumstance warranting an apprehension that they are likely to misuse the liberty if released during the pendency of the appeal. The aforesaid circumstances, coupled with their having remained available to face the trial, prima facie indicate that they are law-abiding persons.
11. It is further reflected from the record that the place of occurrence happened to be the premises/place belonging to





the appellants' party and the genesis of the incident appears to lie in a bona fide dispute between two neighbouring parties concerning a piece of land. Prima facie, the material on record gives an indication that the occurrence may have been a case of free fight, inasmuch as both sides sustained injuries. The evidence, at this stage, appears to present a situation where truth and falsehood are so deeply intermingled that it would be onerous to separate the chaff from the grain without undertaking a meticulous re-appraisal of the entire evidence at the stage of final hearing of the appeal.

12. Another significant circumstance is that two FIRs came to be registered in respect of the same occurrence, albeit containing different versions of the incident. It is also noteworthy that the members of the opposite party were charge-sheeted for, inter alia, constituting an unlawful assembly and causing grievous hurt to the appellants' party, and they were ultimately convicted under Section 325 IPC. This circumstance lends prima facie support to the submission that the occurrence was not a one-sided incident and that both sides were involved in the altercation.
13. In cases involving a free fight, it may at times become difficult for the Court, without a comprehensive appreciation of the evidence, to conclusively discern as to which party was the aggressor. In the present case, having regard to the prima facie circumstance that the incident occurred at the place belonging to the appellants' party, the submission



advanced by learned counsel Mr. Durgesh Khatri that the opposite party may have been the aggressors and that the acts attributed to the appellants were committed in an endeavour either to resist the assault or to protect themselves, cannot, at this stage, be said to be wholly devoid of substance.

14. Be that as it may, a detailed and meticulous appreciation of the evidence, including the rival versions, the injuries sustained by both sides, the circumstances in which the occurrence took place and the question as to who was the aggressor, shall be undertaken at the time of final adjudication of the appeal. This Court is conscious that such re-appreciation cannot be undertaken conclusively at the present stage, particularly when the appeal is not likely to be heard in the near future. Having regard to the totality of the circumstances, this Court does not deem it appropriate to keep the appellants incarcerated during the pendency of the appeal.
15. The issues raised are significant and merit consideration. If accepted, they may result in acquittal or alteration of the conviction and sentence. They require proper examination and re-appreciation of the evidence, with a fair possibility of benefit accruing to the appellants.
16. Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. (corresponding to Section 430 BNSS) 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 appellants-applicants named above shall remain suspended till final disposal of the aforesaid appeal and they 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 they will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicants changes the place of residence, they 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.

17. 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-applicants 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 applicants 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

97/Pooja Tak

