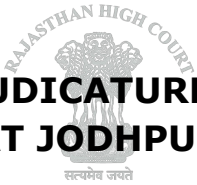




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



D.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 2055/2025

CNR: RJHC010954812025 | URN: SOSA / 4270U / 2025

Gopal S/o Bhanwar Singh, Aged About 50 Years, R/o
Jaisinghdesar Magra, Nokha, Bikaner (At Present Lodged In
Central Jail, Bikaner)

-----Petitioner

Versus

State of Rajasthan, through PP

-----Respondent

Connected With

D.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 2376/2025

CNR: RJHC011158442025 | URN: SOSA / 4918U / 2025

Ramniwas S/o Gangabishan, Aged About 59 Years, R/o Rasisar,
Nokha, Bikaner (At Present Lodged In Central Jail, Bikaner)

-----Petitioner

Versus

State of Rajasthan, through PP

-----Respondent

For Petitioner(s)	:	Mr. Dheerendra Singh, Senior Adv. with Mr. Jagdish Singh (for Gopal) Mr. RDSS Kharlia (for Ramniwas)
For Respondent(s)	:	Mr. Rajesh Bhati, PP Mr. Manish Dhadhich Ms. Pooja Tak

**HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI**

Judgment / Order

16/10/2026

(PER HON'BLE CHANDRA PRAKASH SHRIMALI, J)

1. These separate applications for suspension of sentence have been preferred on behalf of the appellants-accused (hereinafter referred to as "the appellants"), namely, Gopal and Ramniwas, in



D.B. Criminal Appeal No. 126/2024, challenging the judgment dated 08.04.2024 passed by the learned Additional Sessions Judge, Nokha, Bikaner (Rajasthan) (hereinafter referred to as "the Trial Court"), in Sessions Case No. 143/2022, CIS No. 681/2014. By the impugned judgment, the appellants have been convicted and sentenced for the offences punishable under Sections 302, 341, 323, 427, 147 and 148 read with Section 149 of the Indian Penal Code, as under:

Appellants: Gopal and Ramniwas

Section	Sentence	Fine	Sentence in default of payment of fine
Section 302 IPC	Life imprisonment	Rs. 10,000/-	Three months' simple imprisonment
Section 341 IPC	One month's simple imprisonment	—	—
Section 323 IPC	Six months' simple imprisonment	—	—
Section 427 IPC	One year's simple imprisonment	—	—
Section 147 IPC	One year's simple imprisonment	—	—
Section 148 IPC	Three years' simple imprisonment	—	—

All the substantive sentences were ordered to run concurrently.

2. Learned counsel for the appellants submits that they have been falsely implicated in the present case. Petitioner- Ramniwas, who was stated to be an eyewitness to the incident, has not been examined by the prosecution. P.W. 4 Rajaram, the brother of the deceased and an alleged eyewitness, has not specified the weapons allegedly carried by the appellants or the particular parts of the deceased's body on which injuries were inflicted by them. The witnesses have not clearly stated which injury was caused by





which appellant and by which weapon on the body of the deceased. It is further submitted that P.W. 3 Devilal and P.W. 5 Phoolchand, the recovery witnesses, have stated that the police recovered iron rods from the hut and house of appellants Gopal and Ramniwas respectively. However, it is not clear from their statements that the said recoveries were effected in their presence. P.W. 4 Rajaram has also stated that he did not see any weapon in the possession of the appellants. In these circumstances, it is contended that the version contained in the First Information Report is not reliable and that the evidence on record does not clearly establish that the appellants shared the common object of causing the death of the deceased. As per the jail report received from the Central Jail, Bikaner, the accused-appellant Gopal has undergone the sentence up to 31.10.2025. He was thereafter released on interim bail for the period from 01.11.2025 to 14.11.2025. The accused-appellant Ramniwas has undergone the sentence up to 19.12.2025. The details of the sentence undergone by the accused-appellants are as follows:-

Accused- Gopal				
S.No.	CUSTODY DESCRIPTION	YEAR	MONTH	DAYS
1.	Custody as under trial	00	07	13
2.	Custody after conviction	01	06	24
3.	Actual Undergone Period	02	02	07
4.	Earned Remission+ State Remission	00	03	19
5.	Total punishment served including remission	02	05	26
Accused-Ramniwas				
S.No.	CUSTODY DESCRIPTION	YEAR	MONTH	DAYS



1.	Custody as under trial	00	06	28
2.	Custody after conviction	01	08	12
3.	Actual Undergone Period	02	02	10
4.	Earned Remission+ State Remission	00	03	04
5.	Total punishment served including remission	02	05	14



It is further submitted that appellant Gopal has remained in custody since 18.07.2010 and appellant Ramniwas since 19.07.2010. As the appeal is likely to take considerable time for final disposal, learned counsel for the appellants prays that the sentences awarded by the learned Trial Court be suspended and the appellants be released on bail.

3. Per contra, learned Public Prosecutor opposes the applications and submits that the evidence available on record, particularly the statements of P.W. 4 Rajaram, the brother of the deceased, and P.W. 5 Phoolchand, establishes that the appellants caused the death of the deceased by inflicting injuries with iron rods. The statement of P.W. 6 Dr. Sanjeev Buri also indicates that the deceased died as a result of a head injury. Having regard to the gravity of the offences alleged against the appellants, learned Public Prosecutor prays that the applications for suspension of sentence be dismissed.

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

5. The distinction between grant of bail under Section 439 Cr.P.C. and suspension of sentence under Section 389 Cr.P.C. is well settled. While the former operates at the pre-conviction



stage, the latter comes into play after 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 an application for suspension of sentence, the appellate Court is required to examine whether the grounds raised in the appeal disclose a substantial and arguable case. If the material on record suggests that the findings of the Trial Court may be erroneous and that there exists a reasonable possibility of reversal or modification of the conviction, the discretion under Section 389 Cr.P.C. may be exercised.

7. At this stage, the Court is not required to record any final finding on the merits of the appeal. It is sufficient to examine whether the grounds raised are prima facie arguable, while also considering the nature of the offence, the period of sentence and the circumstances of the case. The appellate Court is empowered to affirm, modify or set aside the conviction and sentence upon re-appreciation of the evidence.

8. A perusal of the record reveals that the dispute between the parties arose over the route of a bus. P.W. 4 Rajaram lodged the First Information Report (Exhibit P-11). However, the report does not specify the particular part of the deceased's body on which each appellant allegedly inflicted an injury or the weapon used for that purpose. The prosecution has also not examined Ramniwas, who is stated to have been an eyewitness to the incident. From



the statement of P.W. 4 Rajaram, who lodged the First Information Report, it cannot, at this stage, be ascertained as to which appellant inflicted an injury on which part of the deceased's body and by which weapon.

9. Further, according to the statement of P.W. 5 Phoolchand, the iron rod allegedly recovered from appellant Gopal was recovered by the police from inside his hut, while the witness remained standing outside. Similarly, the alleged recovery from the house of appellant Ramniwas was not effected in the presence of the witness, who remained outside the house. P.W. 6 Dr. Sanjeev Buri has stated that the deceased died after sustaining a head injury which resulted in his going into a coma. However, at this stage, it cannot be concluded that the head injury was inflicted by the appellants. It has also been stated that the appellants Gopal and Ramniwas were on bail before the learned Trial Court.

10. In view of the aforesaid circumstances, the nature of the evidence available on record and the grounds raised in the appeal, the issues require consideration and re-appreciation of the evidence at the appellate stage. The observations made herein are confined to the consideration of the present applications and shall not be construed as a final expression of opinion on the merits of the appeal.

11. Consequently, the applications for suspension of sentence preferred under Section 389 Cr.P.C. are allowed. It is ordered that the sentences awarded to the appellants Gopal and Ramniwas by the learned Trial Court, as detailed in paragraph No. 1 of this



order, shall remain suspended till the final disposal of the aforesaid appeal, and the appellants shall be released on bail, subject to their furnishing personal bonds in the sum of Rs. 50,000/- each along with two sound and solvent sureties of Rs. 25,000/- each, to the satisfaction of the learned Trial Judge, subject to the following conditions:

(i) The appellants shall appear before the learned Trial Court in the month of January of every year until the appeal is decided.

(ii) In the event of any change in their place of residence, the appellants shall furnish their changed addresses in writing to the learned Trial Court as well as to their counsel before the High Court.

(iii) In the event of any change in the addresses of the sureties, the sureties shall furnish their changed addresses in writing to the learned Trial Court.

The appellants shall also appear before the learned Trial Court whenever directed to do so during the pendency of the appeal.

12. The learned Trial Court shall maintain a separate file containing the record of attendance of the appellants. Such file shall be registered as a Criminal Miscellaneous Case connected with the original case in which the appellants were tried and convicted. A copy of this order shall also be placed in the said file for ready reference. The Criminal Miscellaneous Case shall not be taken into account for statistical purposes relating to the pendency and disposal of cases before the Trial Court.



In the event of failure of either of the appellants to appear before the learned Trial Court as directed, the learned Trial Judge shall submit a report to this Court for cancellation of bail.



(CHANDRA PRAKASH SHRIMALI),J

(MUNNURI LAXMAN),J

4-5-Taruna/ Yogesh Kumawat