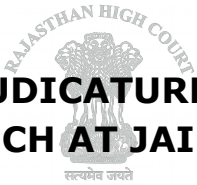




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Misc. 2nd Suspension Of Sentence Application
(Appeal) No. 1761/2026

CNR: RJHC020731062026 | URN: SOSA / 3175U / 2026

Kaluram Son Of Sardarmal, Aged About 35 Years, Resident Of
Dantala Gurjaran, Police Station Chandwaji, District Jaipur,
Rajasthan. (At Present In Central Jail, Jaipur)

-----Accused/Appellant

Versus

1. State Of Rajasthan, Jaipur
2. The Victim, Dantla Gurgaran, P.s. Chandwaji, Jaipur

-----Respondents

For Appellant(s) : Ms. Prathishtha Sunger
For Respondent(s) : Mr. Vijay Sngh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

16/10/2026

1. The instant 2nd application for suspension of sentence is preferred by the appellant-applicant accused **Kaluram son of Sardarmal** (hereinafter referred to 'the appellant') in pending appeal aggrieved from order of conviction and sentence dated 12.10.2023 in Sessions Case No.17/2021 passed by learned Special Judge, POCSO Act Cases, Jaipur District, Jaipur whereby appellant was convicted for offence under Sections 3/18, 5(l)/18, 5(n)/18 of POCSO Act with alternate Sections 376(3)/511, 376(2n)/511, 376(2f)/511 of IPC and sentenced accordingly.
2. Learned counsel for the appellant while relying upon grounds of appeal submitted that without observing principle of law learned trial court has arrived at a conclusion of conviction. She further



submitted that learned trial court has overlooked material contradictions and discrepancies, which goes to root of the matter. She further submitted that the entire case of prosecution rests on testimony of interested witness and no independent witness was examined to corroborate the story of prosecution.

3. Learned counsel for petitioner submits that first Suspension of Sentence Application of present petitioner was dismissed on 29.04.2025 and the appeal preferred by appellant-accused has not been considered on merit by this Hon'ble Court. She further submits that till date the petitioner has undergone almost 6 years and 6 months against the awarded sentence of 10 years. She also referred the circumstances of the case and submitted that there is nothing abnormal in the incident as the victim herself has instigated the petitioner to enter into such relation.

4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted custody certificate and same is taken on record.

5. Heard learned counsel for appellant and learned Public Prosecutor. Perused the material placed on record.

6. First Suspension of Sentence Application application of present petitioner was dismissed on 29.04.2025 wherein we have observed as under:-

"5. On the basis of report (Ex.P-2) dated 29.11.2020 submitted by PW-2 Uncle of victim, FIR No.423/2020 was registered at P.S. Chandwaji, Jaipur. During investigation, police has found that present appellant has committed aggravated penetrative sexual assault with his daughter therefore arrested him and filed charge-sheet against him. After framing of charge, prosecution has examined 16 witnesses and exhibited 21 documents. The accused was examined under Section 313 Cr.P.C. and wife of appellant was examined as defence



witness. Learned trial court has convicted appellant under Sections 3/18, 5(l)/18, 5(n)/18 of POCSO Act with alternate Sections 376(3), 376(2n), 376(2f)/511 of IPC. The maximum sentence awarded to appellant is rigorous imprisonment of 10 years. The age of victim was determined on the basis of date of birth as 03.08.2008 and victim was about 12 years but less than 13 years.

6. We have considered statement of victim, recorded as PW-1 and also uncle of victim recorded as PW-2. Also considered defence witness DW-1, step-mother of victim and second wife of present appellant. After considering the evidence, trial court has found that appellant has attempted to commit penetrative sexual assault/rape with his daughter. Victim was examined by PW-9 Dr. Renuka Sharma and prepared medical report Ex.P-7. As per her examination, hymen was ruptured. As per FSL, Ex.P-21 mixed DNA profile was obtained from stains detected on pyjama of victim and alleles of male DNA profile of present appellant are accounted with female DNA profile in stains detected on pyjama of victim. The male DNA profile of appellant is matching with DNA profile detected on underwear of victim.

7. The appellant is in custody for more than 4 years and 7 months but having considered the fact that the appellant is father of a minor victim and he is charged with the serious offence though he was punished only for attempt but considering the relationship between victim and appellant, I am of considered view that it is not a fit case to release appellant on bail."

7. The custody certificate dated 30/09/2026 submitted by the Public Prosecutor indicate that the petitioner has already been served 6 years 5 months and 6 days against maximum sentence of 10 years awarded by the Trial Court. There is no doubt about the fact that the appeal has not been considered by this Court for disposal.

8. **In Repolicy Strategy of Grant of Bail** SMWP (Criminal) No.04/2021 (order dated 08.05.2025) while considering the judgments in case of **Bhagwam Rama Shinde Gosai And Ors vs State Of Gujarat (1999) 4 SCC 421, NCB Vs. Lakhwinder Singh 2025 SCC Online SC 366 and Atul vs The State Of**





Madhya Pradesh (2024) 3 SCC 363 Hon'ble Supreme Court has observed that when there is a fixed period of sentence, normally the power of suspension of sentence under Section 389 Cr.P.C. should be exercised liberally, unless there are exceptional circumstances brought on record.

9. Therefore, without expressing any opinion on merits, I am of considered view that it is a fit case wherein appellant can be enlarged on bail. The application under Section 430(1) B.N.S.S. is allowed and sentence of appellant accused-**Kaluram son of Sardarmal** is suspended till disposal of appeal with the condition that he would 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 for his appearance in this court on 17.11.2026 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. After release of appellant on bail, he will not indulge in any criminal activity and if it is found that he is involved in any criminal activity, the order shall be recalled.
2. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
3. 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.



4. Similarly, if the sureties change their address(s), he will give in writing his changed address to the trial Court.

10. Misc. Application stands disposed of.

11. A copy of this order be sent to learned trial court through E-mail.

(ASHOK KUMAR JAIN),J

DA-129/ANAND

