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# HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal) No. 1057/2026

CNR: RJHC010569292026 | URN: SOSA / 2298U / 2026

In

S.B. Criminal Appeal No.713/2026

Shrawan Nath S/o Arjun Nath, Aged About 21 Years, R/o Sutharo Ka Guda, Police Station Sadri, District Pali. Presently- Samal, Police Station Sayra, District Udaipur. (Presently Confined In Central Jail, Udaipur)

----Petitioner

Versus

1. State Of Rajasthan, State Of Rajasthan Through Public Prosecutor.
2. Amarpal Yadav S/o Kumargi Lal, R/o Sajjan Nagar, Kacchi Basti, Police Station Ambamata, District Udaipur.

----Respondents

Connected With

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal) No. 820/2026

CNR: RJHC010451822026 | URN: SOSA / 1724U / 2026

IN

S.B. Criminal Appeal No.870/2026

Mangunath S/o Laxman Nath, Aged About 51 Years, Chitamba Ps Kareda District Bhilwara Rajasthan (Presently Lodged In Central Jail Udaipur)

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Amarpal S/o Shri Kamarlal, Sajjan Nagar Kacchi Basti Ps Ambamata District Udaipur Rajasthan

----Respondents

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|---|---|---|
| For Petitioner(s) | : | Mr. J.V.S. Deora<br>Mr. R.S. Rawal |
| For Respondent(s) | : | Mr. Narendra Gehlot, Dy.GA<br>Mr. Rajendra Charan |

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**HON'BLE MR. JUSTICE FARJAND ALI**

**Order**

**Reportable**

**14/10/2026**

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1. The instant applications for suspension of sentence have been moved on behalf of the applicants in the matter of judgment dated 25.03.2026 passed by the learned Special Judge, POCSO Act Cases No.1, Udaipur in Sessions Case No.51/2025 whereby they were convicted and sentenced to suffer maximum imprisonment of 20 years RI along with a fine of Rs.1,00,000/- under Sections 6/17 and 5/6 of the POCSO Act and lesser punishment for the other offences under Sections 143(4), 144 of the BNS.

2. Learned counsel for the appellants submit 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

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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.

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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. This Court has meticulously scrutinized the evidence brought on record by the prosecution during the course of trial, in the light of the submissions advanced and the circumstances emerging therefrom. Upon an overall appreciation of the material available on record, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt. The evidence adduced does not inspire that degree of confidence which is

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indispensable for sustaining a finding of guilt in a criminal trial. The prosecution is required to establish its case on the touchstone of proof beyond reasonable doubt, and any material deficiency in the evidentiary chain, particularly where it relates to the essential ingredients of the alleged offence, must necessarily enure to the benefit of the accused.

11. The testimony of PW-5 assumes considerable significance in determining the culpability of the appellants, as her deposition bears directly upon the foundational circumstances sought to be established by the prosecution. Her categorical admission that she was unaware of whether she had been sold in consideration of any monetary amount casts a serious shadow upon the prosecution's theory concerning the alleged transaction. Such an admission cannot be brushed aside as an inconsequential omission, particularly when the allegation of payment or receipt of money constitutes a material circumstance in the prosecution's narrative. The evidentiary value of her testimony, therefore, assumes added importance while examining whether the prosecution has succeeded in establishing the essential ingredients of the alleged offence.

12. Furthermore, the prosecution has failed to produce cogent, reliable and satisfactory evidence demonstrating the actual giving or receipt of any monetary consideration in connection with the alleged transaction. In the absence of convincing evidence on this material aspect, the allegation that the victim was sold for a monetary consideration remains

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insufficiently substantiated. A conviction cannot be founded upon conjectures, presumptions or circumstances which fall short of the requisite standard of proof. The prosecution must stand or fall upon the strength of its own evidence, and the deficiencies apparent in the present case cannot be supplied by speculation or by drawing inferences unsupported by the material on record.

13. At its highest, the prosecution's case, as reflected in Exhibit P-12, is that the victim was below eighteen years of age at the relevant time and was, therefore, a minor, and that she was married to the appellant, Shrawannath. The factum of her minority is undoubtedly a circumstance of legal significance; nevertheless, its legal consequences must be assessed in the context of the precise allegations levelled, the statutory provisions invoked and the evidence adduced to establish the commission of the offences charged. The mere existence of a marriage involving a minor, without more, cannot automatically dispense with the prosecution's obligation to prove each essential ingredient of the substantive criminal offences alleged against the appellants.

14. In this backdrop, the contention advanced on behalf of the appellants that the prosecution case, even if accepted in its entirety, may not travel beyond the alleged contravention of the provisions of the Child Marriage Restraint Act requires serious consideration. The Court must carefully distinguish between the legal consequences flowing from a marriage involving a minor and the commission of any separate criminal offence alleged to have been perpetrated in

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connection therewith. Whether the evidence on record establishes the ingredients of the offences for which the appellants have been convicted, or whether the circumstances disclose, at the highest, a violation of the applicable statutory provisions relating to child marriage, is a question that warrants a dispassionate and legally informed examination. Such an assessment must necessarily be undertaken with reference to the applicable law and without attributing criminal culpability merely on the basis of suspicion or the existence of circumstances which, by themselves, do not establish the charges beyond reasonable doubt.

15. Equally, the question concerning the victim's consent, her understanding of the marriage and the circumstances in which the marriage was solemnized cannot be treated as a matter of mere formality. The evidence must be examined to ascertain whether the marriage was entered into with her willingness, whether it was imposed upon her against her wishes, and what evidentiary material, if any, establishes the circumstances in which the arrangement came to be made. At the same time, the legal significance of consent must be determined in accordance with the applicable statutory framework, particularly having regard to the victim's age at the relevant time. Her apparent willingness or the absence of an express objection cannot, in itself, override any statutory protection afforded to a minor. Nevertheless, the surrounding circumstances remain relevant to the extent that they assist the Court in determining the actual nature of

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the transaction alleged by the prosecution and the individual culpability attributed to each appellant.

16. Another circumstance which merits consideration is the prosecution's own account concerning the relationship between the biological mother of the victim and one of the appellants, as well as the assertion that they were agreeable to arrangements purportedly intended to secure the victim's welfare. This circumstance, if borne out by the evidence on record, requires evaluation in its proper perspective. The relationship between the parties and their respective conduct may provide relevant contextual background for understanding how the alleged marriage came to be solemnized and whether the prosecution's theory of sale or exploitation finds corroboration in the surrounding circumstances. However, such a circumstance cannot, by itself, conclusively establish either the innocence or the guilt of the appellants; its significance must be assessed alongside the entire body of evidence and in conjunction with the specific allegations made against each of them.

17. Viewed cumulatively, the circumstances relied upon by the prosecution do not appear to have been examined with the degree of evidentiary certainty necessary to sustain the conviction without further scrutiny. The material question is not merely whether the victim was a minor or whether a marriage was solemnized, but whether the prosecution has satisfactorily established the alleged criminal transaction and the requisite culpability of each appellant beyond reasonable doubt. The distinction is of considerable importance, for the

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existence of a circumstance that may invite legal scrutiny does not, in itself, establish every criminal allegation sought to be founded upon it.

18. Consequently, the prosecution evidence, particularly the testimony of PW-5, the absence of satisfactory proof regarding the alleged monetary consideration, the circumstances surrounding the solemnization of the marriage and the relationship between the persons concerned, calls for a comprehensive and meticulous appraisal. The deficiencies in the prosecution's case assume significance when considered collectively, rather than in isolation, and raise substantial questions concerning the sustainability of the findings of guilt recorded against the appellants. The benefit of doubt cannot be withheld where the evidence, upon a fair and holistic evaluation, fails to cross the threshold of proof beyond reasonable doubt. The ultimate determination must, therefore, rest upon the established facts and the applicable law, rather than upon conjecture, suspicion or assumptions arising merely from the circumstances surrounding the marriage.

19. In view of the foregoing discussion, this Court is of the considered opinion that the evidence brought on record gives rise to substantial arguable grounds warranting a closer examination of the appellants' conviction at the time of final adjudication of the appeal. The deficiencies in the prosecution evidence, particularly with regard to the alleged monetary consideration, the testimony of PW-5 and the circumstances surrounding the solemnization of the

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marriage, cannot be overlooked while considering the present application. Without expressing any final opinion on the merits of the appeals, this Court finds that the appellants have made out a case for suspension of the sentence during the pendency of the appeal.

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20. Accordingly, the applications for suspension of sentence filed under Section 389 Cr.P.C.(corresponding to Section 430 BNSS) are 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-applicants named above shall remain suspended till final disposal of the aforesaid appeal and they shall be released on bail provided each of them 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 change the place of residence, they will give in writing their 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.

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21. The learned trial Court shall keep the record of attendance of the accused-applicants in a separate files. Such file be registered as Criminal Misc. Cases 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 applicants do 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

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