



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

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal)
No. 1733/2026

CNR: RJHC011006212026 | URN: SOSA / 3870U / 2026



1. Monu Mohammed S/o Ghisu Mohammed, Aged About 37 Years, Resident Of Dugoli, Tehsil Jayal,district Nagaur (Rajasthan). (At Present Lodged In District Jail Nagaur.)
2. Arif Mohammed S/o Ghisu Mohammed, Aged About 45 Years, Resident Of Dugoli, Tehsil Jayal,district Nagaur Rajasthan. (At Present Lodged In District Jail Nagaur.)
3. Munshi Mohammed S/o Ghisu Mohammed, Aged About 39 Years, Resident Of Dugoli, Tehsil Jayal,district Nagaur (Rajasthan). (At Present Lodged In District Jail Nagaur.)

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. R.S. Chundawat
For Respondent(s) : Mr. Narendra Gehlot ,Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-
09/10/2026

1. The instant application for suspension of sentence under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been preferred on behalf of the applicants in connection with the judgment of conviction and order of sentence dated 18.08.2026 passed by the learned Additional Sessions Judge, Jayal, District Nagaur, in Sessions Case No. 28/2023 (arising out of Sessions Case Nos. 42/2016 and 53/2016), whereby applicants were convicted for the offence



under Section 304 Part II and 323 read with Section 34 of the Indian Penal Code and sentenced to undergo five years' rigorous imprisonment, along with a fine of Rs.10,000/-. The applicants seek suspension of the sentences awarded to them during the pendency of their criminal appeal.

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 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, learned counsel Shri R.S. Chundawat has advanced a substantial argument with regard to the applicants' right of private defence and the circumstances in which the alleged exercise of such right came to be treated as exceeding its permissible limits. The argument warrants consideration in the light of the principles enunciated by this Court in *State of Rajasthan v. Shiv Narayan and others.* (D.B. Criminal Appeal No. 250/1992), particularly with reference to the law laid down by the Hon'ble Supreme Court in *Bishna and Others v. State of West Bengal*, AIR 2006 SC 302. The fundamental consideration in determining whether the right of private defence has been exceeded is not whether, upon a calm and retrospective appraisal, the person concerned could have adopted a less harmful mode of resistance, but whether the force employed can reasonably be assessed in the setting of the imminent danger as it appeared to the



person confronted with it. A person suddenly exposed to an assault, apprehending death or grievous bodily injury, cannot be expected to weigh the precise degree of force necessary to repel the attack with mathematical accuracy. In the heat of the moment, when fear, apprehension and disturbed mental equilibrium operate simultaneously, the capacity to make a measured assessment of the exact extent of defensive force is inevitably impaired. The law does not demand a level of composure and deliberation from a person confronted with imminent peril that human nature itself may not permit. This consideration assumes greater significance where no immediate assistance from the police, security personnel or other persons capable of intervening is reasonably available, and the person concerned is left to protect himself or his family against the perceived threat. The nature and intensity of the apprehension must also be evaluated in the light of the antecedents, reputation and perceived propensity for violence of the assailant, wherever such circumstances are borne out by the evidence. Where the person facing the attack reasonably apprehends that the assailant is capable of inflicting grave injury or taking life, the degree of fear engendered by that apprehension is a relevant circumstance in assessing the response. It would, therefore, be legally impermissible to determine the question of excess by isolating the injuries caused from the circumstances in which they were inflicted or by applying a standard of detached deliberation to a situation of sudden peril. At the same time, the right of private defence is





preventive and protective in character, not punitive or retaliatory, and does not extend to the infliction of harm beyond what is reasonably necessary for the purpose of defence. The assessment must consequently be contextual, pragmatic and informed by the totality of the circumstances, including the initiation and progression of the occurrence, the nature of the apprehended threat, the availability of an effective avenue of escape or assistance, the weapons involved and the mental state reasonably attributable to the person acting in self-preservation. In *State of Rajasthan v. Shiv Narayan and others*.(D.B. Criminal Appeal No. 250/1992), this Court emphasised that a person acting under an imminent threat cannot be expected to calculate the precise measure of force required to avert the danger and that the plea of private defence must be examined without adopting a hyper-technical approach. Applying these principles at the present stage, the circumstances surrounding the genesis of the occurrence, the rival versions concerning the commencement of the assault, the injuries sustained by the respective parties and the precise role attributable to each applicant require careful reappraisal in the appeal. If the evidence, when examined in its entirety, supports the applicants' plea that the occurrence arose in circumstances necessitating defensive action, the question whether the force employed exceeded the permissible limits would have to be determined in the light of the aforesaid principles, rather than by reference to the ultimate consequence alone. These aspects raise arguable questions





warranting examination at the appellate stage and cannot appropriately be foreclosed while considering the present application for suspension of sentence.

11. 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.

12. The learned trial Court shall keep the record of attendance of the accused-applicants 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 applicant 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

150/Pooja Tak

