HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension of Sentence Application No.322/2026
In
S.B. Criminal Appeal (Sb) No. 375/2026
CNR: RJHC020165892026 | URN: CRLAS / 763U / 2026

Sanjay Kumar Son Of Dhuli Lal, Aged About 31 Years, Resident Of Devri Mund, Police Station Harnawda Shahji, District Baran, At Present Resident Of Near Karneshwar Power House, Kota, District Kota (Raj.) (Accused Apppellant Is Confined In District Jail, Karauli)

----Appellant

Versus

State Of Rajasthan, Through PP

----Respondent

For Appellant(s)	:	Mr. Girish Khandelwal
For Respondent(s)	:	Mr. Manvendra Singh, PP

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR
Order

23/11/2026

1. The instant suspension of sentence application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been preferred by the applicant against the judgment dated 29.01.2026, passed by the learned Special Judge, NDPS Act Cases, Karauli (Raj.) (District & Sessions Judge, Karauli) in Sessions Case No.49/2021 (CIS No.49/2021), whereby the applicant has been convicted and sentenced for the offences under Sections 8/21 of NDPS Act, as under:-

> **Under Section 8/21 of NDPS Act:**
> Ten years' rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine, two years' additional rigorous imprisonment.

The sentences awarded to the accused-applicant shall run concurrently.

2. It is contended by learned counsel for the applicant that learned trial Court has not appreciated the evidence in its correct perspective. It is contended that the co-appellant Bharatlal sentenced were suspended by this Court vide order dated 22.07.2026 and the case of the present applicant is not distinguishable. It is contended that the quantity of 101.40 gm of smack was effected from the present applicant which falls below the commercial quantity, whereas the Trial Court vide impugned judgment has convicted the present applicant and the other appellant treating the quantity as commercial which is incorrect. It is also contended that the prosecution failed to establish the fact that the said contraband remained intact upto sending from the Police Station to the FSL. The prosecution failed to prove the fact that on 04.03.2021, samples were sent to FSL. It is also contended that in the malkhana register (Exhibit P-39), there is no such entry on 04.03.2021, indicate receiving of samples by PW-18 Vishnu Chand. The custody of the applicant in the present case is almost 11 months, regular hearing of the appeal is likely to take considerable time, therefore, the application for suspension of sentence be allowed and the applicant be released on bail.

3. Learned Public Prosecutor has vehemently opposed the submissions made by learned counsel for the applicant and contended that the applicant along with the other co-applicant were convicted under Section 8/21 of NDPS Act and the Trial Court convicted them treating the quantity as commercial quantity. It is also contended that from the possession of the present applicant,

the quantity of 101.40 gm of smack was recovered and similarly, from the other applicants namely Balram, Bablu @ Laxmichand and Bharatlal, quantity of 141.15 gm, 151.15 gm and 10.48 gm of smack were recovered respectively and other were found carrying the aforesaid quantity in a vehicle bearing No. RJ-14-TE-5737, thus, the applicant along with the other co-accused under Section 8/21 of NDPS Act treating the quantity of smack as commercial. It is also contended that the prosecution established beyond reasonable doubt and the other co-accused were carrying such contraband in the vehicle and the fact was well proved by the prosecution witnesses. It is also contended that mere non-mentioning the receiving of the samples in the malkhana register itself cannot be a ground to disbelief the well reasoned judgment, this fact can be appreciated only at the time of final hearing, therefore, considering the aforesaid facts and rider imposed under Section 37 of NDPS Act, the present application for suspension of sentence may be dismissed.

4. Certificate under Rule 311(3), Rajasthan High Court Rules to the fact that the applicant was on bail during trial and he is presently confined in District Jail, Karauli.

5. Heard and perused the material available on record.

6. It was alleged against the applicant and other co-accused that they were carrying commercial quantity of smack in the vehicle bearing No. RJ-14-TE-5737. The recovery of 101.40 grams of smack from the possession of the present applicant was established through the testimony of PW-16 Amit Kumar, the Seizure Officer. The other recovery witnesses namely PW-1 Ramkesh, PW-2 Rishikesh, PW-3 Girdhari Singh, PW-4 Dipendra

Singh, PW-5 Vijay Singh, PW-6 Dhaval, PW-7 Gagan Singh, PW-8 Ramdayal, PW-9 Abhayraj, PW-10 Ramakant, PW-11 Sandeep Singh, PW-13 Narendra, PW-14 Ravindra Singh and PW-16 Amit Kumar also established the fact that the contraband recovered at the place of recovery was duly sealed and deposited in malkhana register (Exhibit P-39). Merely, if the malkhana head has not maintained the malkhana register properly, it cannot be a ground to doubt the entire prosecution story. This argument can be seen only at the time of finally hearing the argument. There exist ample evidence to establish possession of 101.15 gm of smack from the possession of the applicant. Further, the SOSA of the other co-accused cannot be a ground to claim the parity, in a matter where prima-facie the prosecution proved that from the present applicant and the other co-accused, the commercial quantity of smack was recovered and that too from the vehicle where their presence was found jointly. Considering the aforesaid facts and rider imposed under Section 37 of the NDPS Act, this Court is not inclined to suspend the sentence of the present applicant.

7. Accordingly, the suspension of sentence application is hereby dismissed.

(PRAVEER BHATNAGAR),J

Crt_14/D-A/8/KESHAV GHIYA