HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc. Suspension Of Sentence Application No. 921/2026
CNR: RJHC020430202026 | URN: SOSA / 1756U / 2026

In

D.B. Criminal Appeal No. 88/2026

1. Mahesh S/o Rameshwar
2. Dhara Singh S/o Rameshwar,
Both R/o Gendupura, Police Station Sadar, Hindaun City, District Karauli, Rajasthan
(At present confined in Central Jail, Bharatpur)

---Accused-Applicants

Versus

State of Rajasthan, Through P.P.

----Respondent

For Petitioner(s)	:	Mr. A.K. Gupta, Sr. Adv. with Mr. Rinesh Kumar Gupta & Mr. Saurabh Pratap Singh
For Respondent(s)	:	Mr. Amit Kumar Punia, PP Mr. Vikram Singh Chauhan with Mr. Anil Agarwal

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HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

25/11/2026

This suspension of sentence application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the accused-applicants (for brevity, "the applicants") who have been convicted and sentenced by the learned Additional Sessions Judge No.2, Hindaun City, District Karauli (for short, 'the learned trial Court') vide judgment dated 11.02.2026 passed in Sessions Case No.15/2022, CIS No.15/2022, as under:-

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1. Section 302 IPC: Life Imprisonment and fine of ₹50,000/-each; in default whereof, six months' additional simple imprisonment.

2. Section 3/25 of Arms Act: Three Years' imprisonment and fine of ₹2,000/-each; in default whereof, six months' additional simple imprisonment.

All the substantive sentences to run concurrently.

Learned Senior Counsel for the applicants, inviting the attention of this court to the findings recorded by the learned trial court, would submit that the disputed property was in possession of the accused party and death of the deceased-Dulli occurred while exercising their right of private defence in protecting the property. Referring to the judgment of the Hon'ble Supreme Court of India in the case of **Vajrapu Sambayya Naidu and others V/s. State of A. P. and others: AIR 2003 SC 3706**, learned Senior Counsel argued that where the prosecution failed to establish as to which of the accused had exceeded his right of private defence, the benefit of doubt must go to all the accused appellants. He, therefore, prayed that the suspension of sentence application be allowed.

Per contra, learned Public Prosecutor, assisted by learned counsel for the complainant, contended that there is a specific allegation against the applicants of causing the death of Dulli by gunshot injuries which is medically corroborated. It was further contended that the weapons of offence were also recovered at their instance. Learned counsel for the complainant also argued that initially, benefit of bail was extended to the applicant-Mahesh by this court during trial which was subsequently cancelled and

the Special Leave Petition preferred thereagainst by the accused applicant was also dismissed by the Hon'ble Supreme Court of India. Therefore, rejection of the application is prayed for.

Heard. Considered.

Although, a finding has been recorded by the learned trial court that the death occurred while the accused applicants exceeded in right of their private defence in protecting the property in their possession; however, from the record we find that the allegation against the applicants is of causing death of Dulichand by multiple gunshots injuries which is medically corroborated. The post-mortem report of the body of the deceased (Ex.P-23) duly proved by Dr. Jagdish Prasad Meena (PW-15) and Dr. Ramnaresh (PW-16), reflects as many as seven entry wounds on various body parts including other grievous injuries. Cause of death was found to be multiple firearm injuries causing damage to heart, lungs and large intestine. The weapons of offence, i.e., a gun and a country made pistol were recovered on the disclosure statement of the applicants. On that premise, at this stage, we are of the *prima facie* opinion that the case does not fall within the Exception 2 of Section 300 IPC.

Their Lordships have, in **Rajesh Upadhyay Vs. The State of Bihar and Another: Criminal Appeal No.5585/2025 (Special Leave Petition (Crl.) No.8736/2025)** decided on 18.12.2025, while cancelling the benefit of suspension of substantive sentence granted by the High Court to the accused-respondent, held as under:-

6.1 It is also the settled principle that the Appellate Court should not reappreciate evidence at stage of Section 389, CrPC and try to pick some lacunae or loopholes here and there in the case of prosecution. The presumption of innocence of the accused which is a principle applied in criminal jurisprudence, holds good only until the accused is tried. Once the accused is convicted at the end of the trial, the presumption of innocence does not continue.

6.5 The dictum that the benefit of suspension of sentence, if at all to be granted in the cases involving conviction under Section 302, IPC, it has to be only in exception cases, is well settled in the catena of judgments. In Vijay Kumar v. Narender & Ors.6 it was observed that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the court should consider relevant factors like the nature of accusation made against the accused, the manner in which crime is alleged to have been committed and the seriousness of offence. The view was reiterated in (2002) 9 SCC 366 Ramji Prasad v. Rattan Kumar Jaiswal & Anr.7, Vasant Tukaram Pawar v. State of Marashtra8, Gomti v. Thakurdas & Ors.9."

Thus, in the backdrop of aforesaid precedential law and looking to the nature and gravity of allegations against the applicants which are found to be proved by the learned trial Court vide judgment impugned, we are not inclined to allow this application.

Accordingly, this suspension of sentence application is dismissed.

Learned Senior Counsel for the applicants prayed that their appeals may be heard expeditiously looking to the period of incarceration.

Prayer is not opposed.

In view thereof, looking to the period of incarceration, office is directed to prepare the paper book and list the appeal for hearing thereafter.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

Crt_3/D-A/24/Gourav