HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal) No. 1324/2026
CNR: RJHC020589452026 | URN: SOSA / 2421U / 2026

In

S.B. Criminal Appeal No.714/2026

Rekh Singh S/o Rajdhar, Aged About 40 Years, Resident Of Sultanpura, Police Station Salempur, District Dausa.
(At Present Cofined In District Jail Dausa)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Petitioner(s)	:	Mr. Satyendra Singh Tanwar, Adv. Mr. Manoj Seth, Adv.
For Respondent(s)	:	Mr. Manvendra Singh, PP

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

16/11/2026

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 25.02.2026, passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commissions for Protection of Child Rights Act, 2005, District Dausa, in Sessions Case No. 01/2024, whereby the applicant has been convicted for the offences under Sections 5(L), J(ii)6 of the Protection of Children from Sexual Offences Act, 2012 and Section 344 of the Indian Penal Code, 1860 as under:-

Under Section 5(L), J(ii)6 POCSO Act:
Twenty years' rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine, One year' additional rigorous imprisonment.

Under Section 344 IPC:
Three years' rigorous imprisonment and a fine of Rs.10,000/-, in default of payment of fine, three months' additional rigorous imprisonment.

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

2. It is contended by learned counsel for the applicant that the learned trial Court has not appreciated the evidence available on record in its correct perspective. It is further submitted that the prosecution has failed to establish that the age of the victim was below 18 years on 16.05.2021, i.e., the date on which she delivered the child. Learned counsel submits that PW-1 Gajanand Meena, who exhibited the scholar register and admission form as Exhibits P-3 and P-2, respectively, has categorically stated in his cross-examination that no birth certificate or any other document showing the date of birth of the victim as 18.07.2005 was submitted along with the admission form. It is further contended that the learned trial Court has erroneously applied the method of calculation while determining the age of the victim on the basis of the date of delivery and concluded that she was below 18 years of age and in the absence of any supporting documentary evidence, a mere entry in the admission form and scholar register is not sufficient to establish the date of birth of the victim.

2.1 Learned counsel for the applicant has also placed reliance upon the judgment passed by the Co-ordinate Bench of this Court

in **Sonu & Ors. Vs. State of Rajasthan**, **D.B. Criminal Appeal No.212/2023** dated 26.10.2026, wherein the Court has held that, though entries as to date of birth in the school register/documents are admissible in evidence under Section 35 of the Act of 1872, but their probative value would depend upon the authenticity and veracity of such entries which can be proved only by the underlying basis on which such entries were made.

2.2 It is further contended that the allegation against the applicant is that he forcibly entered into marriage with the victim and subjected her to repeated sexual assault. However, the learned trial Court itself disbelieved the testimony of the victim (PW-4) with regard to the allegation that the applicant had forcibly kidnapped her. The victim had also alleged that her father had sold her to the present applicant, however, the father of the victim has been acquitted by the learned trial Court vide the impugned judgment. Learned counsel further submits that the documentary evidence, particularly Exhibits P-5 to P-8, indicates that at the time of delivery of the child, the age of the victim was 22 years and it was also pointed out that the victim had signed the aforesaid documents. Further, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (Exhibit P-14), the victim stated that she wanted to obtain a divorce from her husband/applicant. She also expressed her desire to withdraw the case and thus, it is contended that the prosecution has failed to establish that the victim was below 18 years of age at the time of the alleged incident and that her statements are contradictory on material particulars. Learned counsel further submits that the applicant is in custody since 25.02.2026 and the hearing of the

appeal is likely to take considerable time. It is, therefore, in view of the aforesaid facts and circumstances and the arguable grounds raised in the appeal, the application for suspension of sentence may be allowed and the applicant may be released on bail during the pendency of the appeal.

3. Learned Public Prosecutor has vehemently opposed the submissions made by learned counsel for the applicant. It is contended that the trial Court, after examining the documentary evidence, particularly the birth certificate of the victim, concluded that the victim was approximately 16 years of age at the time of the incident. It is further contended that there is a considerable age difference between the applicant and the victim. The age of the applicant, as recorded in the school register, also does not support the case of the applicant, the victim, in her statement, has specifically stated that she was raped by the applicant and was forcibly married to him, therefore, having regard to the peculiar facts and circumstances of the case, the application for suspension of sentence may be dismissed.

4. Certificate under Rule 311(3) of the Rajasthan High Court Rules has been submitted, certifying that the applicant was on bail during trial and is presently confined in jail.

5. Heard and perused the material available on record.

6. Upon considering the arguments advanced by learned counsel for the parties and the material available on record, particularly the fact that PW-1 Gajanand Meena, Headmaster of the school, in his cross-examination, admitted that no documentary proof was submitted along with the admission form with regard to substantiate the date of birth of the victim and no

transfer certificate or any record from the previous school was produced at the time of admission. The trial Court has disbelieved the testimony of the victim with regard to the allegation that she was kidnapped at the age of seven years by the applicant and the other co-accused. The trial Court has also disbelieved the prosecution story that the victim's father, namely, Seesram, had sold her to the applicant and the other co-accused. Consequently, the victim's father Seesram and her brother Jaghmohan have been acquitted.

7. As far as the age of the victim is concerned, apart from the scholar register, school certificate and admission form (Exhibits P-1 to P-3), there is no evidence to substantiate that the date of birth entered in the school register was based upon any documentary evidence. The Co-ordinate Bench of this Court, in the case of **Sonu** (supra), has held that in the absence of any proof regarding the basis of the entry made in the school register, the authenticity of such entry becomes questionable.

8. In the present case, apart from the testimony of PW-1 Gajanand Meena, no other witness has stated that the date of birth of the victim was 18.07.2005 and during the course of investigation, the hospital records pertaining to the delivery of the child by the victim were also taken on record and exhibited as P-5 to P-8. In the said documents, the age of the victim was recorded as approximately 22 years, therefore, considering the aforesaid facts and circumstances, this Court finds that, prima facie, the prosecution has failed to establish the age of the victim beyond reasonable doubt, regular hearing of the appeal is likely to take considerable time, therefore, this Court deems it just and proper

to suspend the sentence awarded to the applicant during the pendency of the appeal.

9. Accordingly, the application for suspension of sentence filed under Section 430 of the BNSS is allowed and it is ordered that the sentence awarded to the applicant- **Rekh Singh S/o Rajdhar,** by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commissions for Protection of Child Rights Act, 2005, District Dausa, in Sessions Case No. 01/2024, vide judgment dated 25.02.2026, shall remain suspended during the pendency of the appeal and the applicant shall be released on bail, provided he furnishes a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Court, undertaking to appear before this Court on 17.12.2026 and as and when called upon to do so till the disposal of the appeal, subject to the following conditions:

> (i) That the applicant shall appear before the learned trial Court in the month of January of every year till the appeal is decided.
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> (ii) That if the applicant changes his place of residence, he shall furnish his changed address in writing to the learned trial Court as well as to learned counsel representing him before this Court, who shall, in turn, inform this Court.
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> (iii) That if any surety changes his address, the surety shall furnish the changed address in writing to the learned trial Court.

10. The learned trial Court shall maintain a record of the attendance of the applicant in a separate file. Such file shall be registered as a Criminal Miscellaneous Case relating to the original

case in which the applicant was tried and convicted. A copy of this order shall also be placed in the said file for ready reference. The Criminal Miscellaneous Case shall not be taken into account for statistical purposes relating to the pendency and disposal of cases before the learned trial Court. In the event that the applicant fails to appear before the learned trial Court, the learned trial Judge shall report the matter to this Court for cancellation of the benefit extended by this order.

(PRAVEER BHATNAGAR),J

Crt_14/D-A/58/Ashwani Kr Srivastava