HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Suspension Of Sentence Application (Appeal) No. 1460/2026
CNR: RJHC020619782026 | URN: SOSA / 2629U / 2026

In

S.B. Criminal Appeal No.3102/2025

Shankar Ahirwar S/o Udha Ahirwar, Resident Of Panchampur, Police Station Chandla, District Chhatarpur (M.p.) (At Present Confined In Central Jail, Bikaner)

----Petitioner

Versus

State Of Rajasthan, Through P.P

----Respondent

For Petitioner(s)	:	Mr. Rahul Agarwal
For Respondent(s)	:	Mr. Manvendra Singh, PP

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

17/11/2026

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 26.09.2025, passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012, Jhunjhunu (Raj.) in Sessions Case No.58/2023 as under:-

> **Under Section 344 IPC:**
> One year rigorous imprisonment and a fine of Rs.1,000/-, in default of payment of fine, ten days' simple imprisonment.

Under Section 366(A) in Alternative 366 IPC:
One year rigorous imprisonment and a fine of Rs.1,000/-, in default of payment of fine, ten days' simple imprisonment.

Under Sections 5 (L)/6 of the POCSO Act:
Seven years' rigorous imprisonment and a fine of Rs.30,000/-, in default of payment of fine, three months' simple 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 in its correct perspective. It is further submitted that the prosecution failed to establish that, at the time of commission of the offence, the petitioner's date of birth recorded in the school records (Exhibits P1 to P3) was 01.07.2005. It is contended that PW-16 (father of the victim), in his cross-examination, has stated that he is not aware of the date of birth of the victim. Similarly, PW-5 (mother of the victim) has not deposed that the victim's date of birth was 01.07.2005. It is also contended that PW-1 Archana Tiwari, who exhibited the school record (Exhibits P1 to P3) in her cross-examination, stated that the victim's grandmother came at the time of admission and that it bears her thumb impression. It is further contended that the age of the victim was not duly established during the trial. The relationship between the petitioner & the victim was consensual and thus does not bring the petitioner's act within the ambit of rape or under the provisions of sections 5/6 of the POCSO Act. The applicant has a fair chance of success in the appeal, and a regular hearing of the appeal is likely to take considerable time. Therefore, the present application for

suspension of sentence may be allowed. In this regard, reliance was placed upon the judgment passed by the Division Bench of this Court in the case of **Sonu Vs State of Rajasthan (D.B. Criminal Appeal No. 212/2023),** wherein, relying upon the judgments in **Birad Mal Singhvi vs Anand Purohit, 1988 Supp. SCC 604** and **Allamelu vs State, (2011) 2 SCC 385**, it was held that although an entry relating to the date of birth in the school register/documents is admissible in evidence under Section 35 of the Evidence Act, 1872, its probative value depends upon the authenticity and veracity of such entries, which can be proved only by the underlying basis on which such entries were made.

3. Learned Public Prosecutor has vehemently opposed the submissions made by learned counsel for the applicant.

4. Certificate under Rule 311(3), Rajasthan High Court Rules, to the fact that the applicant was not on bail during trial and is presently confined in Central Jail, Bikaner (Raj.).

5. Heard and perused the material available on record.

6. There is no documentary evidence that the date of birth of the victim was 1.7.2005 at the time of her admission to the school. The father of the victim, in his examination-in-chief, merely stated that the victim was 17 years of age at the time of the occurrence. He categorically admitted that he was not aware of the victim's date of birth and that he is illiterate. Although the admission form bears the thumb impression of the victim's grandmother, however no supporting document was produced before the school authorities to establish, with certainty, that the victim's date of birth was 01.07.2005. Thus, prima facie, this Court finds that the victim's age was below 18 was not established

beyond reasonable doubt. Further, PW-2, the victim, in her statement, has stated that she had accompanied the petitioner and stayed with him at different places; therefore, the possibility of a consensual relationship seems to be a strong possibility. Thus, having regard to the aforesaid facts and circumstances, and also because regular hearing of the appeal is likely to take considerable time, this Court deems it just and proper to suspend the sentence awarded to the applicant-appellant during the pendency of the appeal.

7. Accordingly, the application for suspension of sentence filed under Section 430 of the BNSS is allowed. It is ordered that the sentences awarded to the applicant- **Shankar Ahirwar S/o Udha Ahirwar**, by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012, Jhunjhunu (Raj.) in Sessions Case No.58/2023, vide judgment dated 26.09.2025, 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.
>
> (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.

(iii) That if any surety changes his address, the surety shall furnish the changed address in writing to the learned trial Court.

8. The learned trial Court shall maintain a record of the attendance of the accused-applicant in a separate file. Such file shall be registered as a Criminal Miscellaneous Case relating to the original case in which the accused-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 accused-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/70/KESHAV GHIYA