HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. 3rd Suspension Of Sentence Application No. 1840/2026

in

S.B. Criminal Appeal No.1189/2023
CNR: RJHC020772732026 | URN: SOSA / 3304U / 2026

Vinod Kumar Bairwa Son Of Shri Umrao Bairwa, Aged About 26 Years, Resident Of House No. 29, Govind Vihar Extension -2, Behind Metro Mas Hospital Jaipur Original Resident Kuan Ka Bass, Gram Hingota Police Station Bebai District Dausa (Raj.) (Presently The Accused-Appellant Is Confined In Central Jail, Jaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Rajneesh Gupta with Ms. Chanchal
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

28/10/2026

1. This third application for suspension of sentence is preferred in pending appeal which was admitted on 18.05.2023 and aggrieved from order of conviction and sentence dated 05.05.2023 in Sessions Case No.90/2020 passed by learned Special Judge (POCSO Act Cases) No.1, Jaipur Metro-I whereby appellant was convicted for offence under Sections 11/12 and 3/4 of POCSO Act and sentenced accordingly.
2. Learned counsel for the appellant while relying upon grounds of appeal submitted that without observing principle of law

learned trial court has arrived at a conclusion of conviction. He further submitted that learned trial court has overlooked material contradictions and discrepancies, which goes to root of the matter. He further submitted that the entire case of prosecution rests on testimony of interested witness and no independent witness was examined to corroborate the story of prosecution.

3. Learned counsel for the petitioner, while referring to the judgment in the case of **Deepak @ Bansu Vs. State of Punjab, Criminal Appeal — of 2025 SLP (Criminal) No. 18293/2025, order dated 05.12.2025,** and **Kamal @ Kamal Choudhary Vs. State of Madhya Pradesh, Criminal Appeal No. 992/2025, decided on 28.02.2025,** has submitted that the Hon'ble Supreme Court has considered the grant of SOS in cases where the period of custody is approximately four years. He also submitted that the appellant has been facing criminal prosecution since 2020 and was on bail during the trial. He further submitted that the present appellant was convicted for a maximum period of ten years under Section 3/4 of the POCSO Act. At last, he submitted that there are multiple grounds which support the defence of the appellant but the appeal has not been considered on merits though the appellant was neither charged under the IT Act nor convicted under the IT Act.

4. Aforesaid contentions were opposed by learned Public Prosecutor. He submitted that complainant has already been informed.

5. Heard learned counsel for appellant and learned Public Prosecutor. Perused the record.

6. The first suspension of sentence application of the present petitioner was dismissed by this Court on 11.09.2023 wherein we have observed as under:

> "A perusal of record indicated that on the basis of Ex.P-1 (report) submitted by victim herself on 08.05.2020 FIR (Ex.-P/2) was registered. During investigation, her statement under Section 161 Cr.P.C. exhibited as Ex.D1 and statements under Section 164 Cr.P.C. were recorded on 16.05.2020 and exhibited as Ex.P-4. The age of victim as per record was less than 18 years but more than 16 years. Victim in her statement clearly alleged that she was forced to enter into physical relationship with appellant though she narrated several other things in her statement but the allegation of creating fake ID on Instagram and also uploading certain photographs (inappropriate material), which were exhibited by prosecution as Ex.P-8 to Ex.P-17 also placed on record. All these photographs were downloaded by brother of victim from Instagram account and produced with a certificate under Section 65B of Indian Evidence Act, exhibited as Ex.P-7
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> Learned trial court had convicted present appellant under Section 11/12 and 3/4 of POCSO Act. Present appellant was neither charged nor found guilty for offence of IT Act because I.O. did not recommended commission of offence under the IT Act. The reason behind same was that complainant had failed to provide details of fake ID including PHP address etc. to the investigating agency and on the basis of reply. Ex.D5, charge under the IT Act was dropped.
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> Having considered the totality of facts and circumstances, particularly the statement of victim (PW-1) wherein she alleged rape by present appellant though initially she compromised the matter, but later due to circumstances created by present appellant, she was forced to rise against appellant.
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> The brother of victim was examined as PW-2 and during cross-examination, he submitted that he had seen mobile phone with victim which belongs to appellant. He further admitted that appellant is known to him and also their

> relative. The mother of victim was examined as PW-3 though father of victim was not produced by the prosecution.
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> We have considered these statements and also the statement of IO-PW-10 (Dilip Kumar). After considering the entirety of facts and circumstances, we cannot express any opinion on merits of the case including delay in lodging FIR as raised by learned counsel for appellant and also the fact that victim had improved her version. A series of incident as narrated in the matter clearly indicated that appellant and family of victim not only knew to each other but they were also related to each other, therefore the reasons of delay can be well presumed in the matter. Moreover, the parties had tried to close the incidents due to close relations but later on when things deteriorated in such a manner as narrated by PW-1, she came out to raise her voice against appellant. Herein, though investigating agency had dropped the charges under the IT Act, the fact that there were some photographs (inappropriate material) which were placed on record and exhibited during trial deserves attention. The matter of privacy is of prime importance for an innocent child victim. The possession of any inappropriate photograph or video certainly jeopardize the safety and security of victim. No one has authority to continue to possess or upload any indecent or inappropriate photographs or videos in their repository or upload on any social media.
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> This court, time and again considered this type of tendency of possessing intimate photographs/videos of friend, fiancee or a partner. In this case appellant is quite matured and adult person whereas victim was not only minor but a school student therefore looking to the act of present appellant particularly in light of relationship between the parties, is just like betraying family of victim."

7. The second suspension of sentence application was dismissed by this Court on 24.09.2025, wherein we have observed as under:

> "This Court has already considered the issue raised by learned counsel for applicant on merits and there is no new argument which requires further consideration by this Court. The applicant-accused is in custody for 3 years

> and 5 days including period of remission against the maximum sentence of 10 years. The period of incarceration is even not 50%. The material considered by this Court clearly indicate that victim was not only intimidated but her photographs were published on social media after creating a fake ID on Facebook."

8. The material on record clearly indicates that the petitioner has undergone more than four years and two months in judicial custody and, moreover, there is no criminal antecedent reported by the police against him. Though, the FIR was registered under Sections 66(C), 67 and 67-A of the IT Act, along with other provisions. After investigation, the police has not filed a charge-sheet under the IT Act. The allegations, as mentioned by the victim, clearly indicate that the victim has alleged the creation of a fake ID and further sending of messages by the present petitioner-accused. All these aspects were considered by this Court in the previous order.

9. After dismissal of the first suspension of sentence application on 11.09.2023, the present petitioner approached the Hon’ble Supreme Court by filing an SLP (Criminal) Diary No. 23450/2024), and the same was dismissed on 26.07.2024

10. In case of **Kamal @ Kamal Choudhary Vs. State of Madhya Pradesh (supra)**, the Hon’ble Supreme Court has granted bail where, in a case under Section 302 and other offences, the accused was in custody for a period of four years and eight months.

11. In case of **Deepak @ Banshu Vs. State of Punjab (supra),** the Hon’ble Supreme Court has granted bail to the petitioner who was charged under Section 376 of IPC read

with Section 6 of the POCSO Act and awarded a sentence of ten years, but has undergone more than five years of sentence, including remission.

12. The current case does not involve 50% of the sentence, and, moreover, the facts of the present case indicate that the victim was not only threatened but also intimidated due to certain photographs possessed by the petitioner.

13. Having considered the entire material, including the judgments referred to by learned counsel for the appellant, I am of the considered view that this is not a fit case to enlarge the appellant-accused on bail.

14. Hence, this third application for suspension of sentence preferred by appellant accused- **Vinod Kumar Bairwa Son Of Shri Umrao Bairwa,** is hereby dismissed.

(ASHOK KUMAR JAIN),J

Crt_12/D-A/109/CHETNA BEHRANI