HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Stay No. 8405/2026
CNR: RJHC021066592026 | URN: RSTAY / 19162U / 2026

In

S.B. Criminal Appeal (Sb) No. 1420/2019
CNR: RJHC020611442019 | URN: CRLAS / 2358U / 2019

Monu @ Bhag Chand S/o Shri Chand Mal, R/o Peer Ka Kuwa Sambharlake Dist. Jaipur Raj.

----Appellant

Versus

State Of Rajasthan, Through PP

----Respondent

For Appellant(s)	:	Mr. Rinesh Gupta with Mr. Sarwat Alam, Mr. Ashutosh Singh Naruka, Mr. Gorang Agarwal
For Respondent(s)	:	Mr. Manvendra Singh, PP Mr. S.K. Lamba

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Date of conclusion of arguments	**17/11/2026**
Date on which the judgment was reserved	**17/11/2026**
Whether the full judgment or only the operative part is pronounced	**Full Judgment**
Date of pronouncement	**/11/2026**

Reportable

1. The petitioner has preferred the instant stay application under Section 528 of BNSS seeking stay of conviction of the applicant- Monu @ Bhag Chand during the pendency of the appeal, awarded vide impugned judgment dated 09.07.2019 passed by the learned Special Court, Prevention of Child from Sexual Offences Act, 2012, Jaipur in Sessions Case No.142/2017

(271/2014) by which the applicant was sentenced for offence under:

> **Under Section 363 IPC:**
> Five years' rigorous imprisonment and a fine of Rs.50,000/-, in default of payment of fine, six months' rigorous imprisonment.
>
> **Under Section 366 IPC:**
> Seven years' rigorous imprisonment and a fine of Rs.50,000/-, in default of payment of fine, six months' rigorous imprisonment.
>
> **Under Sections 376-D IPC:**
> Twenty years' rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine, six months' rigorous imprisonment.
>
> All the sentences awarded to the accused-applicant shall run concurrently.

2. Learned counsel for the applicant submits that the applicant is a Government servant and the applicant apprehends his termination on account of conviction imposed by the impugned judgment. He further submits that PW-3 Narayan (brother of the victim) lodged a written report (Ex. P1) alleging rape with his sister, and the name of the applicant was not referred to in the written report (Ex. P1). He further submits that PW-1 (victim) was also present when the report was lodged and Ex. P1 bears her signature. He further submits that the investigation was kept pending against the applicant under Section 173(8) of Cr.P.C. and the chargesheet against the applicant was submitted under Sections 376-D and Sections 3/4 of the IPC. He further submits that the learned Trial Court erred in convicting the petitioner under Sections 376(2), 376(d), 366, 363 and 5/6 of the POCSO Act. He further submits that the statement of PW-1 (victim) is not reliable,

as she, in her cross-examination, has stated that she received several injuries on her body and also stated that her clothes were torn. Furthermore, PW-1 (victim), in her cross-examination, stated that she herself went to the Police Station and lodged the report on the night of 10.05.2014. The report was lodged by the police official on her statement; however, no such report has been exhibited, which indicates that the victim herself narrated the entire story to the police official. He further submits that the medical evidence also shows that there were no injury marks on her body, and PW-5, Dr Renu Agarwal, in the cross-examination, specifically stated that there was no injury or redness on the private parts of the victim. She has also stated that there were no signs of struggle on her body and the hymen was found to be old and torn. He also submits that the applicant's name appears for the first time in the victim's statement under Section 164 Cr.P.C., which was recorded after a delay of almost 12 days. He further submits that PW-3 Narayan (brother of the victim), in his statement, has specifically stated that he was present with the victim when the victim’s statement under Section 164 of Cr.P.C. was recorded. He also referred to the statement of PW-13, Mr Ashwini Atre (Investigating Officer), who, in his cross-examination, admitted that during the course of investigation he did not find involvement of the applicant. He also specifically stated that, at the time of the occurrence, the applicant was deputed in the SDM office and was on duty from 09:30 AM to 10:00 PM. He further submits that documentary evidence about the applicant's duty was also placed in defence, which was exhibited as (Ex. D6 to Ex. D8).

3. Learned counsel for the complainant, as well as learned Public Prosecutor, have vehemently opposed the application for staying the conviction of the applicant. It is contended that the victim, in her statement before the trial Court, has categorically stated that the applicant, along with co-accused: Nathu Singh, Deepak @ Deep Chand and Suwa Lal, committed rape upon her and forcibly administered liquor to her. It is further contended that the first Investigating Officer deliberately omitted the name of the present applicant while recording the victim's statement (Exhibit D-2) on 11.05.2014. However, in her statement recorded under Section 164 Cr.P.C., the victim specifically named the applicant along with the other co-accused.

3.1 Learned counsel further submits that merely because no injuries were found on the victim's genital parts, it cannot be inferred that no rape was committed upon her. The victim has categorically stated that all four accused committed rape upon her after forcibly administering liquor to her, as a result whereof she was in an intoxicated condition and was not in a position to resist; therefore, the absence of injuries cannot be a ground to discard her testimony. It is also contended that the names of the applicant and the other two co-accused were not mentioned in the initial report (Exhibit P-1) because, at that stage, the victim was not in a position to narrate the entire incident. However, the report specifically mentions that, apart from accused Suwa Lal, other co-accused had also committed rape upon her.

3.2 Learned counsel further submits that the statement of PW-4 Suman (sister in law/bhabhi of the victim) was also recorded belatedly by the first Investigating Officer on 26.06.2014, Exhibit

D-4, even though the victim had informed her about the entire incident on the very date of lodging of the report, and PW-4 Suman has denied the contents of the said statement. It is contended that the inordinate delay in recording her statement was deliberate and was intended to save the applicant and, as such, the conduct of the first Investigating Officer is stated to be suspicious. It is further contended that the first Investigating Officer, with a view to protecting the applicant, recorded in Exhibit D-4 that the victim had not disclosed the applicant's name and that there was a dispute between the applicant and the victim’s brother’s father regarding some amount paid to the latter. Learned counsel submits that had there been any previous enmity with the applicant, there was no reason for PW-3 Narayan (brother of the victim), who lodged the report (Exhibit P-1), to implicate the applicant falsely.

3.3 It is also contended that the first Investigating Officer deliberately delayed the recording of the victim's statement under Section 164 Cr.P.C., in which the name of the applicant surfaced along with those of the other co-accused. Learned counsel further submits that the names of co-accused Deepak and Nathu Singh were also not mentioned in the initial report (Exhibit P-1), as the victim was not acquainted with them at that stage. She subsequently identified them during the course of investigation; therefore, the defence sought to be put forth by the applicant is devoid of merit.

3.4 Furthermore, about the plea of alibi raised by the applicant, learned counsel submits that the applicant's assertion that he was on election duty at the office of the SDM, Sambhar Lake, on

10.05.2014, is not supported by Exhibit D-9, the attendance register. It is pointed out that the applicant alone has signed the attendance register for 10.05.2014 and 11.05.2014, which were holidays (Saturday and Sunday). In contrast, the corresponding columns for the other employees have been struck off with a pen and do not bear their signatures. It is further pointed out that a perusal of the same register reveals that on 03.05.2014 and 04.05.2014, which were also Saturday and Sunday, none of the employees, including the applicant, had marked their attendance. Thus, it is contended that the attendance entries relied upon by the applicant are manipulated and do not establish his presence on election duty. Learned counsel submits that the first Investigating Officer, to protect the applicant, not only manipulated the statement of PW-4 Suman but also the documentary evidence about the applicant's alleged presence on election duty at the office of the SDM, Sambhar Lake, on the relevant dates.

3.5 Learned counsel further contends that the investigation conducted by the first Investigating Officer suffered from several lacunae, particularly as no endeavour was made to recover the vehicle in which the applicant and the other co-accused allegedly committed rape upon the victim. It is also submitted that the undergarments of the victim and the co-accused, along with the towel allegedly used during the commission of the offence, were sent to the Forensic Science Laboratory, and human semen was detected from the towel, which the first Investigating Officer had recovered from the place of occurrence. A bangle was also

recovered from the site, which constitutes sufficient incriminating evidence against the applicant.

3.6 Based on the aforesaid submissions, learned counsel contends that the trial Court has rightly convicted the applicant after the applicant failed to establish prima facie that he was involved in the alleged act. The counsel also submits that the conviction can be stayed only in exceptional circumstances, and the present case does not fall within them; therefore, the applicant's application for staying the conviction may be dismissed.

4. Heard and perused the material available on record.

5. Before adverting to the factual matrix of the case, it would be apposite for this Court to refer to the principles enunciated by the Hon'ble Supreme Court governing the exercise of power to stay the conviction. In this regard, reference may be made to the judgment passed in the matter of **Shyam Narain Pandey v. State of U.P., (2014) 8 SCC 909,** wherein it was held as under:

> "**8**. It has been consistently held by **this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though the sentence may be suspended**. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.
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> **9**. It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a

period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. **This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary**. That is why, it has been cautioned time and again that **the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice**.

10. In **Ravikant S. Patil v. Sarvabhabhouma S. Bagali**, a three-Judge Bench of this Court has held that the power to stay the conviction … **"should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences"**. In **Navjot Singh Sidhu v. State of Punjab and another**, following **Ravikant S. Patil case** (supra), at paragraph-6, this Court held as follows:

> "6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. **Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case**."

(Emphasis supplied)

6. In the light of the aforesaid judgment, the Court has to see as to whether, the applicant is entitled for the relief of staying his conviction recorded in the impugned judgment. It is alleged against the applicant that he, along with the other

co-accused, committed rape of the victim. The relevant portion of the victim's statement, PW 1, reads as follows:

> "मैं पढ़ती हूँ। मैं गर्ल्स स्कूल कटला बाजार, सांभर में पढ़ती हूँ। 10 मई की बात है। साल मुझें ध्यान नहीं है। मैं नाईन्थ क्लास का रिजल्ट सुनने स्कूल गई थी । रिजल्ट सुनकर जब वापस आ रही थी तो गोपाल जी जालीवाले की दुकान के पास मैं जब आ रही थी तब वहां एक गोल्डन रंग की गाडी आई और मेरें पास रूकी। दीपचंद नाम का लडका ने मेरा हाथ खींचा और जबरदस्ती मुझे गाडी में बैठाया । उस गाडी में तीन जने थे जिनके नाम मोनू, सुवालाल और नाथु भी थी। मोनू मोटरसाईकिल से आ रहा था गाडी में नहीं था। ये लोग मुझें मुरडिया तालाब की तरफ लेकर गये और वहां पर मेरा बलात्कार किया और मुझें जबरदस्ती शराब पिलाई। मेरें साथ नाथू, दीपचंद, सुवालाल, मोनू ने बलात्कार किया और इन चारों ने मुझें शराब पिलाई । इन लोगों ने फिर मुझें वापस गाडी में बैठाया फिर देवयानी की तरफ लाये और एक सुनसान जगह पर उतारकर मुझें धमकी दी कि तू यदि इस घटना के बारे में परिवार वालो को बतायेगी तो तेरें घरवालो को जान से मार देगें"

6.1. The victim statement gets corroboration from the medical evidence and the statement of victim’s brother PW 3 Narayan and from PW 4 Suman (Bhabhi) before whom, PW 1 victim narrated the entire story about commission of rape. It has also come on record that in (Exhibit P-1), the written complaint which was filed on the very day, the name of the applicant appeared. It has also been stated in the report that other persons were also associated with the offence. Also, the statement of PW-1, the victim, reveals that before the commission of rape, she was under the influence of intoxication. Furthermore, the conduct of the Investigating Officer also seems doubtful, as the victim has denied giving the statement (Ex D-1), in which the applicant's name was mentioned.

6.2. In the subsequent statement recorded under Section 164 of the Cr.P.C., the victim has named the present applicant along with the other co-accused about their specific act i.e., commission of rape upon her. The conduct of the Investigating Officer to protect the present applicant is also reflected from the statement of PW-4 Suman (Bhabhi of the victim) to whom the victim narrated the entire incident about commission of rape and PW-4 in her court statement has stated that victim named the present applicant about commission of rape. PW-4 Suman has denied the suggestion that she rendered police statement (Exhibit D-4) before First Investigating Officer. She also denied the fact that there was any enmity with the appellant.

6.3. The applicant during his examination under Section 313 of Cr.P.C submitted the attendance register of date of incident i.e. 10.05.2014. The entry in the register clearly shows that on 10.05.2014 and 11.05.2014., it was Saturday and Sunday and apart from the applicant’s signature, there is no other signatures of the employee who were on duty on those particular dates. On the precedential date i.e., 04.05.2014 and 05.05.2014 which was also Saturday and Sunday, there is no marking of presence of the applicant and other employees, thus it clearly reflect that the First Investigating Officer in order to safe the applicant has manipulated the evidence. The learned Trial Court by the impugned of

conviction, disregarded the applicant's defence with regard to his plea of alibi and the alleged previous enmity with the victim's brother's father. It is also pertinent to note that the case involves allegations pertaining to moral turpitude and merely because the application for suspension of sentence of the applicant was allowed vide order dated 19.08.2019. The said order was passed without appreciating the merit. The case of the applicant does not fall within the category of exceptional circumstances as enunciated by the judgment passed in **Shyam Narain Pandey** (supra) warranting the exercise of discretion by this Court for staying the conviction.

7. In view of the foregoing discussion, the present application of the applicant seeking stay of conviction is hereby dismissed.

(PRAVEER BHATNAGAR),J

Crt_14/S-A/24/KESHAV GHIYA