**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR**

D.B. Criminal Misc. Suspension of Sentence Application No. 24/2026
CNR: RJHC021146642025 | URN: SOSA / 38U / 2026

In

D.B. Criminal Appeal No.7/2026

Mithunath S/o Kaisa @ Kaisra Nath, Resident of Dhakidiawas, Police Station Ghaad, District Tonk (Raj.). (At present confined in Central Jail, Ajmer (Raj.)

----Accused-Applicant

Versus

State Of Rajasthan, Through Its Public Prosecutor

----Respondent

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| For Petitioner(s) | : | Mr. Dharmendra Gurjar |
| For Respondent(s) | : | Mr. Rhishi Raj Singh Rathore, P.P. |

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

**Judgment / Order**

**19/11/2026**

This suspension of sentence application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the accused-applicant (for brevity, "the applicant") who has been convicted and sentenced by the learned Additional Sessions Judge, Camp Devli, District Tonk vide judgment dated 04.10.2025 passed in Sessions Case No.64/2018 (CIS No.65/2018), as under:-

**Section 302/34 IPC:** Life imprisonment and fine of ₹25,000/-; in default whereof, six months' additional simple imprisonment.

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Learned counsel for the applicant submits that he has falsely been implicated in this case. He further submits that the case falls within the mischief of Section 304 Part I IPC and not under Section 302 IPC. He, therefore, prays that the suspension of sentence application be allowed.

Per contra, learned Public Prosecutor opposed the submissions and prayed for dismissal of the suspension of sentence application.

Heard. Considered.

Eye witnesses, namely, Kalu @ Udaynath (PW-2) and Sonia (PW-12) have deposed against the applicant-their father, of causing murder of their mother by inflicting axe injuries on her body. The allegations were found to be medically corroborated by the postmortem report of the body of the deceased-Exhibit P.17 proved by Dr. Amjad Ali (PW-10) and Dr. Laxminarayan (PW-11). The blood stained weapon of offence was also recovered on the disclosure statement of the applicant.

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."

In the backdrop of the aforesaid precedential law and looking to the nature and gravity of allegation found to be proved against the applicant by the learned trial Court, we are not inclined to allow the suspension of sentence application.

Accordingly, the suspension of sentence application is dismissed.

However, looking to the period of incarceration, Office is directed to prepare the paper book and list the appeal for hearing after its preparation.

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

Crt_3/D-A/8/Manish