HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2110/2026
CNR: RJHC020319182026 | URN: CRLMP / 4804U / 2026

Shri Vicky Alias Yogendra Yadav S/o Shri Nandkishor Yadav, Aged About 46 Years, R/o Sutarkhana Mohalla, Nasirabad, Tehsil Nasirabad, District Ajmer (Rajasthan).

----Petitioner

Versus

State of Rajasthan, Through Public Prosecutor.

----Respondent

For Petitioner(s)	:	Mr. Bharat Yadav
For Respondent(s)	:	Mr. N.S. Dhakar, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

18/08/2026

1. The instant Cr. Misc. Petition under Section 528, BNSS has been filed by the petitioner assailing the order dated 30.01.2026 passed by Additional District and Sessions Judge, Nasirabad in Criminal Appeal No.6/2019 whereby appeal preferred by the petitioner against the order of conviction and sentence dated 09.04.2019, passed by learned Judicial Magistrate, Nasirabad, District Ajmer, has been dismissed for non-prosecution.

2. Learned counsel for the petitioner submits that the appeal preferred against the order of conviction and sentence cannot be dismissed in default, hence the Appellate Court may be ordered to decide the appeal filed by the petitioner on merits by affording him an opportunity of hearing.

3. Learned counsel for the petitioner has relied upon the following judgments:-

(i) Bani Singh v. State of U.P., reported in AIR Supreme Court 2439
(ii) Sakunthala v. State Rep. by the Inspector of Police, reported in 2020 (3) AICLR 668
(iii) Sunny @ Eron v. State of Rajasthan, reported in 3014 WLC (Raj)(UC) 544
(iv) Mahendra Singh v. State of Rajasthan, reported in 1998(1) CCR 529
(v) Jankidevi v. State and Anr., reported in 2007(2) WLC 115
(vi) Mr. Taj Mohammad v. State of Uttar Pradesh & Anr., reported in 2023(4) BC 133
(vii) K. Muruganandam & Ors. v. State Rep. by the Deputy Superintendent of Police & Anr., reported in 2021(84) Orissa Cri R 97

4. Learned Public Prosecutor submits that since the appellant was not appearing before the learned Appellate Court, therefore, learned Appellate Court had not option but to dismiss the appeal in default. However, he further submits that in the facts and circumstances of the case, appropriate order may be passed by this Court.

5. I have considered the submissions and perused the record.

6. A perusal of the record reveals that the petitioner was convicted and sentenced by the learned Judicial Magistrate, Nasirabad, District Ajmer vide judgment dated 09.04.2019. Against the said judgment, an appeal was preferred by the petitioner before the learned Additional District and Sessions Judge, Nasirabad (Ajmer), wherein vide order dated 23.04.2019 execution of sentence was suspended and matter was listed for final hearing. It is evident from the record that after getting benefit of bail during pendency of the appeal, petitioner did not turn up before the learned Appellate Court and therefore, his bail bonds were forfeited and warrant of arrest was issued on

04.03.2025 to ensure his presence. When the appeal was listed on 30.01.2026 for hearing, neither petitioner nor his counsel appeared before the learned Appellate Court and therefore under these circumstances the appeal was dismissed for want of prosecution.

7. It is settled law that criminal appeal against the conviction/sentence cannot be dismissed on the ground of default in appearance. The Appellate Court had to go through the record of the case even in absence of the appellant or his counsel and decide the matter on merits.

8. The Hon'ble Supreme Court in case of **Bani Singh Vs. State of U.P.** reported in **AIR 96 (Supreme Court) 2439** has considered this aspect of the case and held as under:-

> *"We have carefully considered the views expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav's case that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution."*

9. In view of the above discussion, this Court is of the considered opinion that learned Appellate Court has committed an error in dismissing the appeal filed by the petitioner against the judgment of conviction and sentence dated 09.04.2019 on the ground of non-appearance of the petitioner and his counsel.

10. Accordingly, the Criminal Misc. Petition is allowed and the impugned order dated 30.01.2026 passed by the learned Appellate Court is quashed and set aside. The appeal is restored to its original number. The learned Appellate Court is directed to decide the appeal on merits strictly in accordance with law.

11. Petitioner is directed to appear before the learned Appellate Court on 01.09.2026 and he would be at liberty to file fresh application for suspension of execution of sentence under Section 430 of BNSS/ Section 389 CrPC and the same shall be considered and decided by the Appellate Court strictly in accordance with law.

12. Stay application and pending application(s), if any, also stand disposed of.

(ANIL KUMAR UPMAN),J

29/Dushyant