HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Misc. Suspension of Sentence Application No. 1229/2026
In
D.B. Criminal Appeal No.250/2026
CNR: RJHC020558842026 | URN: SOSA / 2280U / 2026

Durgalal S/o Devlal, Aged About 38 Years, R/o Nala, Police Station Asnavar, District Jhalawar (Rajasthan)
(Presently confined in Central Jail Kota).

----Accused-Appellant

Versus

State of Rajasthan through Public Prosecutor

----Respondent

For Petitioner(s)	:	Ms. Anzum Parveen
For Respondent(s)	:	Mr. Rhishi Raj Singh Rathore, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR
Judgment / Order

01/09/2026

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") alongwith the appeal. The applicant has been convicted and sentenced by the learned Sessions Judge, Jhalawar (Raj.) vide judgment dated 12.09.2025 passed in Sessions Case No.157/2021 (CIS No.157/2021) as under:-

1. **Section 341 IPC:** One month's simple imprisonment.
2. **Section 302 IPC**: Life imprisonment and fine of ₹10,000/-; in default whereof, two years' additional simple imprisonment.

Both the substantive sentences to run concurrently.

Learned counsel for the applicant submits that he has falsely been implicated in this case. She submits that although, a sharp edged weapon has been recovered at his instance, but, as per the postmortem report (Exhibit P.-8), the deceased had received lacerated wounds. She further submits that even otherwise, the recovery is doubtful being from an open place. Learned counsel contends that the material witnesses such as Smt. Leela Bai (PW-4), Smt. Badam Bai (PW-5) and Ramcharan (PW-1) have turned hostile. Inviting attention of this Court towards the statement of Dr. Khushpal Singh Rathore (PW-7), the doctor who has conducted the autopsy, she would submit that he has stated therein that the injuries on the person of the deceased could have been on account of fall from the height and there were no incised wounds. She, therefore, prays that the suspension of sentence application be allowed.

Per contra, learned Public Prosecutor opposed the prayer.

Heard. Considered.

As per the postmortem report (Exhibit P-8) which was proved by Dr. Khushpal Singh Rathore (PW-7) who conducted the autopsy, the deceased had received two lacerated wounds on his head with sub scale hematoma over left frontoparietal region and occipital region. On opening of skull vault, massive (thick) sub dural haemorrhage was found over left frontoparietal temporal region with thin layer of Subarachnoid haemorrhage present over left frontoparietal temporal region. Multiple haemorrhage were noted in both sides of the brain. The cause of death opined was

"COMA" brought on account of head injuries which were sufficient in the ordinary course of nature to cause death. Thus, the submission made by learned counsel for the applicant in this regard, is of no help to her.

So far as the submission with regard to recovery of sharp edged weapon and the injuries being lacerated, is concerned, the learned trial Court has observed that it was not the case of the prosecution that the injuries were inflicted by the applicant from the sharp side of the weapon recovered.

Relying upon the trustworthy ocular testimony of Smt. Sumitra Bai (PW-3)- wife of the deceased and an eye witness, it was held by learned trial Court that prosecution was able to establish that the fatal injuries were inflicted by the applicant to the deceased. With regard to other prosecution witnesses such as PW-4, PW-5 and PW-1 turning hostile, the learned trial Court has observed that since, they are mother, *mausi* and brother of the deceased respectively, no exception could be taken even if they turned hostile as it was their natural human conduct to save the applicant, a very close relative.

Their Lordships have, in the case of **Rajesh Upadhyay V/s. The State of Bihar & Anr.: 2025 INSC 1468,** after appreciating a catena of precedential law, held that:-

> "It is also the settled principle that the Appellate Court should not reappreciate evidence at the 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."

It was further held as under:-

"**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.: (2002) 9 SCC 366** 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 **Ramji Prasad v. Rattan Kumar Jaiswal & Anr.: (2005) 5 SCC 281**, **Vasant Tukaram Pawar v. State of Marashtra: 2005 INSC 209**, **Gomti v. Thakurdas & Ors.: (2007) 11 SCC 160**."

In the conspectus of aforesaid analysis of evidence and the precedential law as also keeping in view of nature and gravity of accusation against the applicant, we are not inclined to allow the suspension of sentence application.

The suspension of sentence application is dismissed accordingly.

(PRAVEER BHATNAGAR),J (MAHENDAR KUMAR GOYAL),J

s-77/DEEPAK