RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Misc. Suspension of Sentence Application No.1852/2026

In

S.B. Criminal Appeal (Sb) No. 1855/2026
CNR: RJHC011042072026 | URN: CRLAS / 4307U / 2026

Rajasthan High Court
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Pankaj Midha S/o Rajendra Kumar Midha (Arora), Aged About 30 Years, Resident Of Ward No. 19 Vijaynagar, District Sriganganagar, Rajasthan. (Presently Lodged At District Jail Sriganganagar).

----Appellant

Versus

State Of Rajasthan, Pp

----Respondent

Connected With

S.B. Criminal Misc. Suspension of Sentence Application No.1724/2026

In

S.B. Criminal Appeal (Sb) No. 1754/2026
CNR: RJHC011029992026 | URN: CRLAS / 4060U / 2026

Kanwarpal Singh S/o Jagtar Singh, Aged About 37 Years, R/o 39 Ps, Police Station Raisingh Nagar, District Sri Ganganagar At Present House Number 4 Kunj Vihar Second, Padampur Road, Sri Ganganagar District Sri Ganganagar. (At Present Lodged In Central Jail Sri Ganganagar)

----Appellant

Versus

State Of Rajasthan, Through Pp

----Respondent

For Appellant(s)	:	Mr. Abhishek Purohit Mr. D.L.Rawla
For Respondent(s)	:	Mr. Narendra Gehlot, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

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04/11/2026

1. The instant applications for suspension of sentence have been moved on behalf of the applicants in the matter of judgment dated 28.09.2026 passed by the learned Special Judge, NDPS Act Cases, Sri Ganganagar in Sessions Case No.55/2017 whereby they were convicted and sentenced to suffer imprisonment of 20 years RI along with a fine of Rs.2,00,000/- and in default to further undergo 2 years RI.

2. The prosecution case, in brief, is that on 08.05.2017, while conducting routine patrolling, the police team of Police Station Jawahar Nagar, Sri Ganganagar, noticed a silver-coloured Innova vehicle which was allegedly being started by its occupant on seeing the police jeep. On suspicion, the vehicle was intercepted and its occupant, accused Kanwarpal Singh, was apprehended. Upon search, 34 bottles of Codeine Phosphate and Triprolidine Hydrochloride Syrup (RAXEE), weighing 4,012 grams, were allegedly recovered from a black polythene bag in his possession. As he failed to produce any licence or permit, samples were drawn and the contraband was seized, leading to registration of FIR No.244/2017 under Section 8/22 of the NDPS Act.

3. During investigation, Kanwarpal Singh disclosed that he had purchased the said bottles from co-accused Pankaj Midha. Acting upon this information, the police apprehended Pankaj Midha on 10.05.2017 and allegedly recovered 125 bottles of WINCEREX Cough Syrup, weighing 15.250 kilograms, from five cartons lying near

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him. He too failed to produce any valid licence or permit.

4. Upon completion of investigation, charge-sheets were filed against Kanwarpal Singh under Sections 8/21, 25 and 29 of the NDPS Act and against Pankaj Midha under Sections 8/21, 22 and 29 of the Act. The trial court framed charges under the relevant provisions on 21.11.2017. The accused denied the charges and claimed trial. After recording the prosecution evidence and examining the accused under Section 313 Cr.P.C., the trial court heard final arguments and convicted and sentenced the appellants as above.

5. Learned counsel for the appellants submit that the trial court failed to properly appreciate the legal and factual aspects, resulting in an erroneous finding of guilt. Being the first appellate court, this Court may reappraise the evidence. It is further submitted that the appellants remained on bail during trial without misuse of liberty, and as the appeal will take time for disposal, the sentence deserves to be suspended.

6. Learned Public Prosecutor has opposed the prayer for suspension of sentence.

7. Heard learned counsel for the parties and perused the material available on record.

8. The distinction between grant of bail under Section 439 CrPC (corresponding to Section 483 BNSS) and suspension of sentence under Section 389 CrPC (corresponding to Section 430 BNSS) is well settled. While the former operates at the pre-conviction stage, the latter comes into play post-conviction and requires the appellate court to

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assess, prima facie, the sustainability of the conviction and sentence under challenge.

9. Upon conviction, the presumption of innocence stands displaced; however, while considering suspension of sentence, the appellate court is required to evaluate whether the grounds raised in appeal disclose a substantial and arguable case. If the material on record suggests that the findings of the trial court may be debatable, the discretion under Section 389 CrPC (corresponding to Section 430 BNSS) can be justifiably invoked.Where the appeal raises issues which, on prima facie consideration, indicate a reasonable possibility of success, including reversal or modification of conviction, the sentence may be suspended pending adjudication.

10. This Court is guided by the enunciation of law by the Hon'ble Supreme Court in ***Muna Bisoi v. State of Odisha (February 16, 2026)*** , wherein it has been held that prolonged pendency of criminal appeals, not attributable to the convict, constitutes a valid ground for suspension of sentence. Reliance has also been placed on **Kashmira Singh v. State of Punjab *(1977) 4 SCC 291*** , wherein the Supreme Court deprecated continued incarceration of convicts for long periods during pendency of appeals, observing that such practice would amount to a travesty of justice.

11. It is equally settled that while considering such application, the appellate court is not required to record conclusive findings on merits, as that would prejudice the final

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adjudication. A prima facie satisfaction regarding the arguability and substance of the grounds would suffice. The appellate jurisdiction being a continuation of trial, the entire evidence remains open to re-appreciation. The court may ultimately affirm, modify, or set aside the conviction, or alter the sentence, depending upon the outcome of such re-evaluation.

12. Additionally, even where conviction is sustained, the nature of offence or quantum of sentence may warrant reconsideration at the appellate stage, which further justifies a liberal approach in appropriate cases. This Court cannot lose sight of the fact that it is burdened with a large number of pending criminal appeals, and the likelihood of their early disposal remains uncertain. In such circumstances, continued incarceration, despite arguable grounds in appeal, would not be justified, particularly when delay is not attributable to the appellant.

13. I have bestowed my thoughtful consideration upon the rival submissions advanced by learned counsel for the parties and have meticulously scrutinised the impugned judgment, seizure memos, disclosure statements, proceedings undertaken under Section 52-A of the NDPS Act, FSL report and the depositions of the material prosecution witnesses. Upon a prima facie examination of the record, this Court finds that certain substantial and arguable infirmities emerge in the prosecution case, which warrant consideration while adjudicating the applications for suspension of sentence preferred by both appellants,

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namely Kanwarpal and Pankaj Midha.

14. The prosecution case, in brief, rests upon two distinct recoveries allegedly effected from the appellants. The first recovery was allegedly effected by CI Shakeel Ahmed from appellant Kanwarpal on 08.05.2017, wherein 34 bottles containing Codeine Phosphate and Triprolidine Hydrochloride Syrup, weighing 4.012 kilograms, were seized. The second recovery, comprising 125 bottles of WINCEREX Cough Syrup, weighing 15.250 kilograms, was allegedly effected from appellant Pankaj Midha pursuant to the subsequent investigation. The circumstances surrounding these two recoveries, the manner in which the appellants were implicated and the evidentiary material connecting them with the alleged contraband are required to be examined independently as well as in their cumulative perspective.

15. The first circumstance which warrants consideration concerns the alleged implication of appellant Pankaj Midha. The initial recovery proceedings dated 08.05.2017, relating to the seizure of 34 bottles from Kanwarpal, do not disclose the name of Pankaj Midha or any contemporaneous circumstance indicating his involvement. It was only on 10.05.2017 that his alleged complicity surfaced on the basis of a disclosure statement attributed to Kanwarpal under Section 27 of the Evidence Act. Thereafter, the investigating agency allegedly effected a separate recovery of 125 bottles of Codeine Phosphate from Pankaj Midha. The intervening circumstances, the admissibility of the

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alleged disclosure and the extent of independent corroboration supporting the subsequent recovery constitute substantial questions requiring consideration at the final hearing of the appeal. It is well settled that a disclosure statement cannot, by itself, be treated as substantive evidence of guilt. Only that portion of the information which distinctly relates to the fact thereby discovered is admissible under Section 27 of the Evidence Act. The prosecution must, therefore, establish the alleged recovery and the individual complicity of Pankaj Midha through legally admissible and reliable evidence.

16. Another circumstance of considerable significance is the manner in which the subsequent investigation was conducted. After the initial recovery from Kanwarpal, the investigation was entrusted to SI Prakash Devi (PW-12), who undertook the subsequent recovery proceedings as well as the remaining investigation. The appellants contend that Drug Inspector Rampal was summoned to the spot and that proceedings were subsequently undertaken at the family medical shop of appellant Pankaj Midha following his arrest. However, the deposition of PW-12 does not appear to satisfactorily substantiate the alleged participation of the Drug Inspector or the precise circumstances in which the proceedings at the appellant's family medical shop were undertaken. Significantly, Rampal, who could have been a material witness to these proceedings, was not examined during trial. The omission assumes relevance in view of the prosecution's reliance upon the alleged connection of the

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appellant with the seized pharmaceutical preparations.

17. It is further borne out from the record that identical seizure seals bearing the impression 'GS' were allegedly employed in the proceedings relating to the respective recoveries. Although the use of an identical seal, by itself, would not render the recoveries doubtful, the prosecution was required to establish that the seized articles were properly secured, that the seals remained intact and that the identity of the contraband was maintained throughout its custody and transmission to the FSL. In the backdrop of two separate recoveries effected from different appellants, the manner of sealing, preservation and subsequent handling of the seized articles assumes particular significance.

18. The proceedings contemplated under Section 52-A of the NDPS Act also give rise to a substantial issue requiring consideration. The requisite proceedings were allegedly undertaken after an unexplained interval of approximately 112 days from the date of recovery. The prosecution material, as presently available, does not satisfactorily explain the circumstances occasioning such delay. It is true that delay in compliance with Section 52-A does not, in every case, automatically invalidate the recovery or render the entire prosecution case unsustainable. Nevertheless, the statutory safeguards concerning preparation of inventory, certification and drawing of representative samples are intended to preserve the identity and evidentiary integrity of the seized contraband. The delay,

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therefore, assumes significance when considered alongside the other circumstances concerning the sampling procedure and non-production of the seized articles before the Court.

19. A further aspect which deserves particular attention is the manner in which the samples were drawn from the respective recoveries. Although 34 bottles containing Codeine Phosphate and Triprolidine Hydrochloride Syrup, weighing 4.012 kilograms, were allegedly recovered from Kanwarpal and 125 bottles of Codeine Phosphate were allegedly recovered from Pankaj Midha, the prosecution material indicates that only one sample was drawn and forwarded for chemical examination. The question whether the sample so drawn was genuinely representative of the entire seized consignment, particularly when the bottles were stated to have different coloured caps and distinguishing particulars, requires careful examination. The prosecution was required to establish that the sampling procedure adopted was scientifically and legally sufficient to establish the nature and composition of the entire seized quantity. The mere detection of the prohibited substance in a sample would not, without establishing its representativeness and the identity of the remaining seized articles, automatically resolve every question concerning the entire alleged recovery.

20. The seizure memos themselves contain certain discrepancies concerning the description and particulars of the seized pharmaceutical preparations. The bottles of

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syrup are stated to have borne different coloured caps and other distinguishing particulars, which were also reflected in the seizure proceedings and the material forwarded for chemical examination. These circumstances raise an arguable question as to whether the seized bottles constituted a homogeneous consignment and whether the sampling procedure adopted by the investigating agency was sufficient to establish the nature and contents of the entire seized quantity. The evidentiary value of the FSL report, therefore, cannot be divorced from the manner in which the samples were drawn, sealed and transmitted.

21. The documentary evidence also gives rise to an apparent chronological inconsistency. Exhibit P-54, relating to the disposal of drugs, bears the date 09.05.2017, whereas the alleged recoveries are stated to have been effected on 08.05.2017 from Kanwarpal and on 09.05.2017 from Pankaj Midha. The sequence of events and the precise nature of the disposal proceedings, particularly whether the document pertains to one or both recoveries, require closer scrutiny. The prosecution was required to establish the identity and continuity of the seized contraband through cogent evidence. The non-production of the entire seized material before the learned Trial Court and the questions concerning the proof and evidentiary significance of Exhibit P-54, therefore, assume relevance. The effect of such omission would, however, require assessment in conjunction with the inventory, certification, sampling and other evidence available on record.

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22. The non-examination of Rampal, the Drug Inspector, is another circumstance which deserves consideration. His alleged participation in the proceedings at the spot and at the family medical shop of appellant Pankaj Midha could have provided material corroboration to the prosecution version. The appellant is stated to be associated with a licensed medical shop. Nevertheless, the prosecution does not appear to have established, through substantive documentary or oral evidence, the stock position, relevant transactions or other circumstances concerning the said establishment so as to independently substantiate the alleged connection of Pankaj Midha with the contraband. Further, no satisfactory investigation appears to have been undertaken to establish the ownership or possession of the premises from which the alleged recovery was effected. These circumstances raise an arguable question concerning the establishment of conscious possession and the precise nexus of the appellant with the seized pharmaceutical preparations.

23. The evidentiary position is further required to be considered in the light of the testimony of PW-3 Sanjay, an independent witness, who has not supported the prosecution version and has turned hostile. Although the testimony of a hostile witness does not, by itself, efface the entire prosecution case, the absence of corroboration from an independent witness, when viewed in conjunction with the other procedural and evidentiary circumstances, assumes relevance. The cumulative effect of these

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circumstances raises substantial questions concerning the reliability of the alleged recoveries and the prosecution's endeavour to establish an unbroken and trustworthy chain connecting the respective appellants with the seized contraband.

24. It is also pertinent to notice that both appellants remained on bail during the course of trial. No material has been brought to the notice of this Court indicating that either of them misused the liberty so granted or indulged in any activity prejudicial to the proceedings. Further, the acquittal of the other co-accused persons, as recorded in the impugned judgment, is also a circumstance deserving consideration in the context of the alleged interconnection between the accused persons and the absence of an independently established nexus. Nevertheless, the evidentiary position of each appellant is required to be assessed independently, particularly in view of the distinct recoveries attributed to Kanwarpal and Pankaj Midha.

25. Another aspect which merits consideration pertains to the sentence imposed upon the appellants. The learned Trial Court has awarded the maximum prescribed punishment; however, the sentencing order does not appear to disclose adequate and cogent reasons demonstrating why the maximum sentence was considered warranted in the facts and circumstances of the case. The absence of previous criminal antecedents or any other criminal involvement is also a relevant mitigating circumstance which ought to have received due consideration while determining the

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appropriate quantum of punishment. Though the question of proportionality of sentence would ultimately fall for consideration in the appeals, the apparent absence of adequate reasoning in this regard constitutes an additional circumstance deserving consideration at this stage.

26. This Court is conscious of the stringent statutory restrictions imposed by Section 37 of the NDPS Act. The rigour of the statutory embargo cannot be diluted or disregarded merely on account of the pendency of an appeal or the period of incarceration already undergone. At the same time, the Court is required to undertake a meaningful examination of the material available on record to ascertain whether the statutory conditions governing the grant of bail are satisfied. Such an exercise does not warrant a conclusive pronouncement regarding the innocence of the appellants; rather, a tentative assessment of the prosecution material is permissible for the limited purpose of determining whether the statutory restrictions operate as an impediment to the relief sought.

27. In this regard, reliance may be placed upon the decision of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*, passed in Special Leave Petition (Crl.) No.915 of 2023 vide order dated 28.03.2023, wherein the Hon'ble Apex Court elucidated the permissible scope of tentative assessment of the material on record while considering the statutory restrictions under Section 37 of the NDPS Act. The aforesaid decision underscores that the statutory rigour must be applied in the context of the

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actual material available on record and cannot be converted into an insurmountable impediment to the consideration of personal liberty. The principles laid down in *Mohammed Khalid and Another Vs. The State of Telangana* also merit consideration in the context of compliance with the statutory safeguards governing the handling, sampling and evidentiary establishment of seized contraband.

28. Applying the aforesaid principles to the facts of the present case, this Court finds that the cumulative effect of the circumstances noticed hereinabove raises substantial and arguable questions concerning the evidentiary sustainability of the conviction. The unexplained delay in the proceedings under Section 52-A of the NDPS Act, the questions concerning the representativeness of the samples drawn from the respective recoveries, the discrepancies in the seizure proceedings, the non-production of the entire seized commodity before the learned Trial Court, the circumstances surrounding Exhibit P-54 and the non-examination of the material witness Rampal are matters which cannot be brushed aside as inconsequential procedural irregularities.

29. More particularly, the recovery attributed to each appellant requires independent consideration. Insofar as Kanwarpal is concerned, the prosecution relies upon the recovery of 34 bottles containing Codeine Phosphate and Triprolidine Hydrochloride Syrup, weighing 4.012 kilograms, allegedly effected on 08.05.2017. Insofar as Pankaj Midha is

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concerned, the prosecution relies upon the subsequent recovery of 125 bottles of Codeine Phosphate, allegedly effected pursuant to the disclosure statement attributed to Kanwarpal. The absence of any contemporaneous reference to Pankaj Midha in the initial recovery proceedings, the circumstances surrounding the subsequent disclosure and the extent of independent corroboration are material aspects requiring examination at the final hearing. The prosecution must establish the individual involvement of each appellant through legally admissible and reliable evidence. The alleged disclosure of one accused cannot, by itself, substitute the requirement of establishing the legally sustainable culpability of the other.

30. This Court is conscious that each of the aforesaid circumstances, when viewed in isolation, may not necessarily be sufficient to discredit the prosecution case. However, their cumulative effect, particularly in a prosecution founded upon alleged recoveries of pharmaceutical preparations, warrants careful consideration. If the aforesaid contentions ultimately find acceptance upon comprehensive appreciation of the evidence at the final hearing, they may have a decisive bearing upon the sustainability of the conviction and may even enure to the benefit of the appellants, resulting in their acquittal. The appeals, therefore, raise substantial questions which cannot be characterised as merely technical or inconsequential.

31. This Court is further mindful of the fact that both appellants

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are stated to have no other criminal antecedents and have already undergone a substantial period of incarceration. They remained on bail during trial, and no misuse of liberty has been demonstrated. Having regard to the nature of the arguable issues arising from the record, the period of imprisonment already undergone and the likelihood that the appeals may take considerable time for final adjudication, continued incarceration during the pendency of the appeals calls for consideration. These circumstances, when assessed cumulatively, lend further weight to their respective prayers for suspension of sentence.

32. In view of the foregoing discussion, this Court is of the considered opinion that the appellants have made out a case warranting suspension of sentence during the pendency of their respective appeals. Upon a tentative assessment of the material available on record, this Court finds reasonable grounds for believing that the appellants may not be guilty of the offences for which they have been convicted and that they are not likely to commit any offence while on bail. Accordingly, the statutory restrictions contemplated under Section 37(1)(b)(ii) of the NDPS Act do not, in the peculiar facts and circumstances emerging from the record, foreclose consideration of the relief sought.

33. Consequently, without expressing any final opinion on the merits of the appeals or the ultimate evidentiary effect of the circumstances discussed hereinabove, both applications for suspension of sentence preferred by appellants

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Kanwarpal and Pankaj Midha deserve to be allowed, subject to their furnishing the requisite bonds and complying with such conditions as may be imposed by this Court. It is made clear that the observations recorded hereinabove are purely tentative and confined exclusively to the adjudication of the applications for suspension of sentence. The same shall not prejudice either of the parties at the time of final hearing of the appeals, which shall be decided independently on the basis of the evidence available on record and in accordance with law.

34. Accordingly, the applications for suspension of sentence filed under Section 389 Cr.P.C.(corresponding to Section 430 BNSS) are allowed and it is ordered that the sentence passed by learned trial court, the details of which are provided in the first para of this order, against the appellant-applicants named above shall remain suspended till final disposal of the aforesaid appeal and they shall be released on bail provided each of them executes a personal bond in the sum of Rs.50,000/-with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That they will appear before the trial Court in the month of January of every year till the appeal is decided.

2. That if the applicants change the place of residence, they will give in writing their changed address to the trial Court as well as

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to the counsel in the High Court.

3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

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The learned trial Court shall keep the record of attendance of the accused-applicants in a separate files. Such file be registered as Criminal Misc. Cases related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case the said accused applicants do not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

(FARJAND ALI),J

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