

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR**

D.B. CRIMINAL MISC. 4th SUSPENSION OF SENTENCE (BAIL)

APPLICATION NO. /2026

IN

D.B. CRIMINAL APPEAL NO. -----/2026

Sharwan Kumar S/o Shri Mohan Ram, R/o , Mandrela Bypass
Road, Jhunjhunu Raj.

(At Present Lodged In Central Jail Bikaner)

----Appellant

Versus

State Of Rajasthan, Through P.p.

----Respondent

**D.B. CRIMINAL MISC. 4th APPLICATION FOR
SUSPENSION OF SENTENCE UNDER SECTION
430 OF THE BHARTIYA NAGARIK SURAKSHA
SANHITA (BNSS) OF 2023 FOR SUSPENSION OF THE
SENTENCE AGAINST THE JUDGEMENT AND ORDER
DATED 16.07.2019 PASSED BY SHRI MUJJAFAR
CHOUHARY, RHJS, LEARNED ADDITIONAL
SESSIONS JUDGE NO.1, DISTRICT JHUNJHUNU,
SESSION CASE NO. 66/2018 (39/2018) TITLED AS
STATE OF RAJASTHAN VS. SHARWAN KUMAR,
WHEREBY THE LEARNED TRIAL COURT
CONVICTED THE PRESENT ACCUSED APPELLANT
FOR THE OFFENCES UNDER SECTIONS 201, 302,
AND 397 I.P.C. AS UNDER:**

UNDER SECTION 201 I.P.C.- 3 YEARS SIMPLE IMPRISONMENT ALONGWITH THE FINE OF RS. 5,000 /- AND IN DEFAULT OF THE PAYMENT OF FINE, HAS BEEN ORDERED TO FURTHER UNDERGO 2 MONTHS OF SIMPLE IMPRISONMENT;

UNDER SECTION 302 I.P.C.:- LIFE IMPRISONMENT ALONGWITH THE FINE OF RS. 10,000/- AND IN DEFAULT OF THE PAYMENT OF FINE, HAS BEEN ORDERED TO FURTHER UNDERGO 3 MONTHS OF SIMPLE IMPRISONMENT;

UNDER SECTION 397 OF I.P.C.:- 10 YEARS OF RIGOROUS IMPRISONMENT ALONGWITH THE FINE OF RS. 5,000/- AND IN DEFAULT OF THE PAYMENT OF FINE, HAS BEEN ORDERED TO FURTHER UNDERGO 2 MONTHS OF SIMPLE IMPRISONMENT;

D.B. CRIMINAL MISC. SUSPENSION OF SENTENCE (BAIL) APPLICATION NO. 1314/2019 WAS DISMISSED VIDE ORDER DATED 04.01.2021 BY HON'BLE MR. JUSTICE MANOJ KUMAR VYAS AND HON'BLE MR. JUSTICE GOVERDHAN BARDHAR.

D.B. CRIMINAL MISC. SECOND SUSPENSION OF SENTENCE (BAIL) APPLICATION NO.750/2022 WAS DISMISSED AND WITHDRAWN VIDE ORDER DATED 30.01.2023 BY HON'BLE MR. JUSTICE ANIL KUMAR UPMAN AND HON'BLE MR. JUSTICE PANKAJ BHANDARI.

D.B CRIMINAL MISC. INTERIM SUSPENSION OF SENTENCE BAIL APPLICATION NO. 943/2022 WAS GRANTED VIDE ORDER DATED 01/08/2022 BY HON'BLE MR. JUSTICE PANKAJ BHANDARI AND HON'BLE MR. JUSTICE SAMEER JAIN.

TO,

HON'BLE THE CHIEF JUSTICE AND COMPANION JUDGES OF THE HON'BLE HIGH COURT AT JAIPUR BENCH, JAIPUR.

MAY IT PLEASE YOUR LORDSHIPS,

The humble appellant most respectfully beg to submit this application as under:

1. That the D.B Criminal Misc Suspension of Sentence Bail Application No. 314/2019 Was Dismissed Vide Order Dated 05.01.2021 by Hon'ble Mr. Justice Manoj Kumar Vyas and Hon'ble Mr. Justice Goverdhan Bardhar.
2. That the D.B Criminal Misc. Second Suspension of Sentence Bail Application No.600/2022 Was Dismissed and Withdrawn Vide Order Dated 09.01.2023 by Hon'ble Mr. Justice Anil Kumar Upman and Hon'ble Mr. Justice Pankaj Bhandari.
3. That the D.B Criminal Misc. Interim Suspension of Sentence Bail Application No. 94/2022 was granted vide order dated 01/08/2022 by Hon'ble Mr. Justice Pankaj Bhandari and Hon'ble Mr. Justice Sameer Jain.

4. That The FIR No. 79/2018 (under Sections 302 and 201 of IPC) was registered at the Sadar Police Station, Jhunjhunu, on March 22, 2018, by the complainant concerning the disappearance of Chaukharam. The complainant reported that his father had not returned home since 2:00 p.m. on March 20, 2018.
5. That The body of the deceased Chaukharam was discovered on March 22, 2018, in Beed, Jhunjhunu. The discovery was made by the complainant, local residents and law enforcement officials. The complainant informed that his father (the deceased) was wearing the pair of Gold Gokhru and Earrings in both of his ears and a Silver Bracelet in his right hand somebody has murdered him and eventually absconded.
6. That The post-mortem examination, was conducted by P.W. 20 Navalkishore Saini and corroborated by P.W. 21 Dr. Gaurav Kumar, confirmed that Chaukharam had sustained multiple head injuries, which were determined to be the cause of death.
7. That The prosecution presented a comprehensive case against the accused, with 29 witnesses and 74 exhibits. Among the key witnesses: **P.W. 14 Sushil Kumar** testified about the accused's financial transactions and his interaction with Chaukharam before the murder. Sushil Kumar provided evidence of the borrowing money and interacting with Chaukharam on the day of his disappearance. **P.W. 15 Sitaram** also provided testimony regarding the accused's financial dealings and described an instance when the

accused returned a significant amount of money after borrowing it. **P.W. 25 Anil Kumar** offered photographic evidence of the crime scene, showing the condition of the body and the surroundings where the body was discovered. The photographs documented bloodstains and other pertinent details. **P.W. 29 Rakesh Kumar** described hearing distress sounds on March 22, 2018, and later discovered Chaukharam's body with severe injuries.

8. That The court, after evaluating the evidence and testimonies, found the accused guilty of the charges under Sections 302 (murder), 397 (robbery), and 201 (concealment of evidence) of the Indian Penal Code. The conviction was based on substantial circumstantial evidence, including the testimony of witnesses and the physical evidence linking the accused to the crime. The defence arguments regarding the lack of direct evidence and motive were reviewed but ultimately rejected.
9. That after the hearing both the parties carefully, the learned trial court convicted and sentenced the accused appellant for offence under sections under sections 201,302 and 397 of I. P. C vide the impugned judgment and order dated 16/07/2019.

GROUND

- a. Because, Hon'ble Trial Court has failed to consider that the prolonged detention without a proper appeal violates appellant right to a speedy hearing, a crucial component of Article 21. The delay in proceedings has not only affected his

personal liberty but has also denied him justice within a reasonable time frame. Petitioner's extended detention without a fair and expedited appeal infringes upon his presumption of innocence. He has been deprived of his freedom for an extended period while awaiting appeal, undermining the principle that he should be considered innocent until proven guilty.

- b.** Because the Hon'ble Trial Court has failed to consider that Petitioner's prolonged detention can have severe psychological and emotional effects. Petitioner's mental well-being could have been significantly compromised due to the extended period spent in custody without resolution or closure, which could be seen as a violation of his right to a dignified life under Article 21.
- c.** Because The Hon'ble Trial Court has failed to consider that the conviction was primarily based on circumstantial evidence, which, under legal standards, requires overwhelming conclusiveness. The circumstantial evidence presented does not conclusively prove Sharwan Kumar's guilt beyond a reasonable doubt. This oversight supports the argument for suspending the sentence pending the outcome of the appeal, where a reassessment of the evidence may lead to a different conclusion.
- d.** Because The Hon'ble Trial Court has failed to consider the inconsistencies in the testimonies of witnesses such as P.W. 14 Sushil Kumar, P.W. 15 Sitaram, and P.W. 25 Anil Kumar. These testimonies do not directly link Sharwan Kumar to the crime and were inconsistent in nature. The trial court's

failure to adequately address these inconsistencies and the lack of direct connection supports the need for suspending the sentence while the appeal is pending.

- e.** Because The Hon'ble Trial Court has failed to consider the potential disputes surrounding the evidence presented, including DNA and items with blood stains. The defense argues that this evidence may not be as definitive as the prosecution claimed and that its interpretation could be contested. The potential for error in this evidence supports the suspension of the sentence until a thorough review during the appeal.
- f.** Because The Hon'ble Trial Court has failed to consider potential procedural and factual errors in the trial process, which could have impacted the fairness of the trial and the conviction. These errors, if proven, could justify the suspension of the sentence to ensure that any potential miscarriage of justice is rectified during the appeal process.
- g.** Because The Hon'ble Trial Court has failed to consider the personal circumstances of Sharwan Kumar, including the harshness of his continued imprisonment given his prolonged incarceration. The defense highlights these humanitarian factors as grounds for suspending the sentence during the appeal process.
- h.** Because The Hon'ble Trial Court has failed to fully uphold the principle of presumption of innocence, which mandates that Sharwan Kumar should be considered innocent until proven guilty beyond a reasonable doubt. The ongoing appeal provides an opportunity to reassess the trial court's decision,

and maintaining the sentence during this period contradicts this fundamental principle.

- i.** Because The Hon'ble Trial Court has failed to consider the principles of fairness and justice, which are supported by suspending the sentence to allow Sharwan Kumar to fully participate in his legal defense while awaiting the appeal's outcome. This approach ensures that the legal process is equitable and acknowledges the possibility of errors in the trial court's judgment.
- j.** Because the Hon'ble Trial Court has failed to consider that as in the landmark case of *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979) it was highlighted the plight of undertrial prisoners who were incarcerated for long periods awaiting appeal. The Supreme Court ordered the release of several under trial prisoners who had been in jail for exceptionally long periods without their cases being heard.^{0Z 3}

Because the Hon'ble Trial Court has failed to consider that no individual should be detained unless there are relevant reasons to do so. As in the case of *Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh* (1978), the Supreme Court emphasized the significance of bail as the rule and not the exception, particularly during the pendency of appeals. The Court highlighted that an individual should not be detained unless there are compelling reasons justifying such detention. It reinforced the presumption of innocence and the principle that denial of bail should have reasonable grounds.

k. Because the Hon'ble Trial Court has failed to consider that as in the case of *Kashmira Singh v. State of Punjab* if an individual is detained for so long then who will compensate his incarceration during the pendency of the appeal as well as the trial. It is important to mention here that without consisting the facts and circumstances of the case the accused is in jail since long that it is the violation of the article 21 of the Constitution of India.

l. That the case of *Bapu Singh and Ors. Vs State of U.P* can founded on the basis of the Article 21 which enshrines the fundamental right to life and personal liberty. In this context, the case might involve an alleged violation of the rights guaranteed under Article 21 by the State of Uttar Pradesh. The grounds for this case could revolve around the alleged infringement of the fundamental rights of *Bapu Singh* and others by the state. This could include situations where their life or personal liberty was jeopardized, such as arbitrary arrests or detentions, lack of proper legal procedures, custodial torture, or any actions that undermine their dignity or personal autonomy.

m. Because the Hon'ble Trial Court has failed to consider that the reputation of a person is also an exceptional aspect in his life as It was held in the case of *Deepak Bajaj vs state of Maharashtra and Another*, (2008) that the reputation of a person is a valuable asset with regard to article 21 of the Indian constitution thus, it is important to maintain a balance

between the personal liberty of an accused person and the police investigation rights.

- n.** Because the accused/appellant has demonstrated his commitment to complying with legal and judicial orders throughout the course of his case. Notably, he adhered to the Hon'ble High Court's interim suspension order dated 01.08.2022 by surrendering to the jail authorities as required on 16.08.2022. His compliance with such orders reflects his respect for the judicial process and his acknowledgment of the legal system's authority. Additionally, his conduct during the legal proceedings has been consistent with a person seeking justice and fair treatment. The fact that he has voluntarily complied with court orders and demonstrated good faith throughout his incarceration suggests that he is a person of integrity.
- o.** Because The Hon'ble Trial Court has failed to consider whether any evidence presented by the prosecution may have been misleading or misinterpreted. Misleading evidence could significantly affect the conviction. The suspension of the sentence allows for a reassessment of how evidence was presented and its impact on the verdict.
- p.** Because The Hon'ble Trial Court has failed to adequately consider any mitigating factors that could influence the severity of the sentence. If there are circumstances that could reduce the accused's culpability or impact the sentencing, these should be reviewed. Suspension of the sentence allows for a more thorough examination of such factors during the appeal.

- q. Because, appellant, who has a clean past record, seeks protection as it is his fundamental right to life and personal liberty that is being compromised or at risk due to unfair treatment or lack of due process in legal proceedings. Appellant clean past record could be relevant in asserting his right to fair treatment and protection under Article 21.
- r. That the contents and grounds of the annexed appeal may also be taken as grounds of this suspension of sentence application.
- s. That the accused/appellant is innocent and have been falsely implicated as there is no direct or even indirect evidence against the appellant.
- t. That the appellant is in custody for last more than 6 years and 5 months; and the hearing of appeal may take time.

PRAYER

It is therefore, most humbly prayed that this application may kindly be accepted and allowed and the sentence passed by the trial court against the accused appellants applicants may be ordered to be suspended during the pendency of the appeal.

Jaipur Dated :

HUMBLE APPELLANT

Through his counsel

(advocate name)

Enroll No. R/-----/1999

Email : -----@yahoo.com

Mob. No. : 7734051664

NOTES:-

- a. That this is the 4th application for suspension of sentence , and the D.B Criminal Misc Suspension of Sentence Bail Application No. 1314/2019 Was Dismissed Vide Order Dated 04.01.2021 by Hon'ble Mr. Justice Manoj Kumar Vyas and Hon'ble Mr. Justice Goverdhan Bardhar.
- b. That the D.B Criminal Misc. Second Suspension of Sentence Bail Application No.750/2022 Was Dismissed and Withdrawn Vide Order Dated 30.01.2023 by Hon'ble Mr. Justice Anil Kumar Upman and Hon'ble Mr. Justice Pankaj Bhandari.
- c. That the D.B Criminal Misc. Interim Suspension of Sentence Bail Application No. 943/2022 was granted vide order dated 01/08/2022 by Hon'ble Mr. Justice Pankaj Bhandari and Hon'ble Mr. Justice Sameer Jain.
- d. That it has been typed on stout papers, as pie papers were not readily available.
- e. It has been typed by my private steno in my office.
- f. Petitioner has not filed any SLP in the Supreme court of India.

COUNSEL FOR THE
APPELLANT

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH
AT JAIPUR.

D.B. CRIMINAL MISC. 4th SUSPENSION OF SENTENCE

APPLICATION NO. /2024

in

D.B. Criminal Appeal No. 300 /2019

Sharwan Kumar Vs State of Rajasthan

INDEX

| S.NO. | PARTICULARS | PAGE NO. |
|-------|-------------|----------|
|-------|-------------|----------|

| | | |
|--|--------------------------------|-------------|
| 1.-S.B. CRIMINAL MISC. 4 TH | SUSPENSION | 1-12 |
| | OF SENTENCE (BAIL APPLICATION) | |

Counsel for Appellant