



2026:DHC:2179



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 13.03.2026*

+ CRL.A. 1031/2024 and CRL.M.A. 21912/2025 & CRL.M.(BAIL)
232/2026

FAIZAAN TAKAppellant

Through: Mr. Abhishek Gupta, Advocate

versus

THE STATE N.C.T. OF DELHI AND ANRRespondents

Through: Mr. Utkarsh, APP for the State

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

CRL.M.(BAIL) 232/2026

1. This application under Section 430(1) read with Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), has been filed on behalf of the sole accused in CIS No. 7088/2016 on the file of the Additional Sessions Judge (Special Court - Rape Cases), South District, Saket Courts, New Delhi, seeking suspension of sentence. As per the impugned judgment dated



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23.07.2024, the accused has been found guilty of offences punishable under Sections 450 and 376 of the Indian Penal Code, 1860 (IPC). *Vide* the order on sentence dated 21.09.2024, the accused has been sentenced to undergo simple imprisonment for a period of seven years and fine of ₹1,00,000 and in default of payment of fine, simple imprisonment for one month for the offence punishable under Section 376 IPC and to simple imprisonment of one year and fine of ₹1000 and in default of payment of fine, simple imprisonment for seven days for the offence punishable under Section 509 IPC. The sentence has been directed to run concurrently.

2. The prosecution case is that on 01.08.2015, the accused criminally trespassed into the room of PW1 with the intent to rape her and subsequently committed rape upon her.

3. It was submitted by the learned counsel for the appellant/accused that, this was a case of consensual relationship. PW1 in her cross-examination, admitted that she had shared her



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nude photographs and videos with the accused, which indicates the consensual nature of their relationship. The alleged incident is stated to have occurred on 01.08.2015, however, the FIR was registered only on 07.08.2015. The inordinate delay of seven days has not been explained by the prosecution. PW4, who used to stay in a room adjoining PW1's room, deposed that on 01.08.2015, after the incident, she had repeatedly asked PW1 about what had happened to her. However, PW1 merely cried and did not disclose any incident of sexual assault. PW-6 and PW-9, the police officers who first reached the spot on 06.08.2015, deposed that when they arrived at the scene of the incident, the accused was not present there. The accused was later called to the spot by the police, after which he was taken into custody. It was also submitted that PW1 deposed that the bed-sheet had been seized by the police for forensic examination. However, the FSL report detected semen that did not match the accused.

3.1. It was further submitted that PW1 was in touch with the



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accused between 01.08.2015 and 07.08.2015. Attention was also drawn to PW1's social media messages to submit that a day prior to the incident, PW1 had messaged the accused on whatsapp, "*see what happens now. You all will regret. Ab dekh.*". It was also pointed out that after a few hours of the alleged incident, PW1 had commented "*moneysucker*" on her friend's social media post, stating "*Comment one word about your ex*". Lastly, it was submitted that the appellant/accused has already undergone incarceration for a period of 1 year and 11 months out of 7 years sentence. The appellant has no prior criminal antecedents. Reliance has been placed on the dictums in **Bhagwan Rama Shinde Gosai & Ors. vs. State of Gujarat (1999) 4 SCC 421**, **Aasif v. State of U.P., 2025 SCC OnLine SC 1644** and **Rajesh Upadhayay v. State of Bihar, 2025 SCC OnLine SC 2853**.

4. The application is opposed by the learned Additional Public Prosecutor, who submitted that the arguments advanced by the learned counsel for the appellant amount to an attempt to



reappreciate the evidence, which cannot be considered at the stage of suspension of sentence.

5. Heard both sides.

6. In **Rajesh Upadhayay** (*supra*), the accused was convicted for the offence punishable under Sections 302, 342, 149, 147, 148, 504 read with Section 149 IPC along with Section 27 of the Arms Act, 1959 and were sentenced to life imprisonment. During the pendency of the criminal appeal, the High Court suspended the sentence and granted bail to the convicts primarily on the ground that their role in the incident was only of instigation, and also observing that there was a delay of three days in forwarding the FIR to the Magistrate and that the original report had not been produced. The Apex Court reversed the order of the High Court while holding that the considerations relied upon by the High Court were irrelevant and insufficient, especially when the accused had already been convicted for a serious offence like murder. It was held that once a conviction is recorded, the presumption of



innocence no longer survives, the appellate court must exercise great caution while granting suspension of sentence in cases involving life imprisonment under Section 302 IPC, which should be granted only in exceptional circumstances. It was further observed that the High Court should not re-appreciate evidence or rely on minor procedural aspects at the stage of Section 389 Cr.P.C.

6.1. In **Aasif** (*supra*), the appellant was tried for the offences punishable under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012, Sections 354, 354kha, 323 and 504 IPC and Section 3(1)(10) of the SC/ST (Prevention of Atrocities) Act, 1989. He was convicted and sentenced to a maximum punishment of rigorous imprisonment for a period of four years. Aggrieved, the appellant preferred an appeal before the High Court and filed an application under Section 389 Cr.P.C. seeking suspension of sentence during the pendency of the appeal. The High Court rejected the application, observing that the offence



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was immoral and heinous and that no sufficient ground existed to release the appellant on bail during the appeal. The Apex Court set aside the judgment of the High Court and remanded the matter back for fresh consideration, holding that the case involved a fixed-term sentence of four years, and in such cases suspension of sentence should ordinarily be considered liberally unless exceptional circumstances exist, especially when the appeal is unlikely to be heard soon. If the appellant remains in jail for most of the sentence period, the statutory right of appeal would become meaningless.

6.2. **Bhagwan Rama Shinde** (*supra*), the appellants were convicted by the trial court under Section 392 read with Section 397 IPC and sentenced to rigorous imprisonment for a period of 10 years. They filed an appeal before the High Court and sought suspension of sentence, but the High Court rejected the request and also refused their plea for expeditious hearing of the appeal, stating that older appeals were pending. The Apex Court, reversing the



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order of the High Court, held that when a convict is sentenced to a fixed-term sentence and has filed a statutory appeal, suspension of sentence should generally be considered liberally unless exceptional circumstances exist, especially when the appeal cannot be heard soon.

7. It is well settled that while considering an application for suspension of sentence, the appellate court is only to examine if there is such patent infirmity in the order of conviction that renders it *prima facie* erroneous. Where there is evidence that has been considered by the trial court and conclusions arrived at, the appellate court, while exercising its power for suspension of sentence, cannot re-assess or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail. (See **Preet Pal Singh vs State of U.P., (2020) 8 SCC 645** and **Omprakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123**)

8. I was taken through the FIS/FIR as well as the Section 164



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statement of PW1. In the 164 statement she has described in detail the overt acts of the accused. The question whether PW1 has fully corroborated her earlier statements in her testimony before the court or whether she is a '*liar, who can never be believed*' as described by the learned defence counsel, is a matter that needs to be considered when the appeal is considered on merits. As far as the argument on delay is concerned, it is not all delay that is fatal to the prosecution case. In offences of this nature, there is bound to be some amount of delay, because in very many cases it is only after much deliberation by the victim and family members, the final decision to proceed under law is taken. In the light of the serious nature of the allegations, the present case is not one where the discretionary power of this Court to suspend the sentence under Section 430 BNSS (Section 389 Cr.PC.) needs to be invoked. However, the appropriate course would be to expedite the hearing of the appeal.

9. The application is accordingly dismissed.



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10. List for hearing on 20.04.2026.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MARCH 13, 2026
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