



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Bail (Suspension of Sentence) Application
No.2204/2024

In

S.B. Criminal Appeal (SB) No.3151/2024



Rajesh Kushwah S/o Shri Ramshakal Kushwah, Aged About 50 Years, R/o Dakshin Tola Khukhundu Police Station Khukhundu Tehsil Salempur District Devariya Uttar Pradesh Presently Tenant Makan Malik Shri Amir Singh Jat Government Secondary School Abhaypur Ke Pass, House No. 344, Abhaypur, Police Station Sector 19 Phase, First Panchkula District Panchkula Haryana (Presently Confined In Central Jail Ajmer)

----Appellant

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Appellant(s) : None present
For Respondent(s) : None present

JUSTICE ANOOP KUMAR DHAND
Order

24/01/2026

Reportable

- On a resolution passed by three different Bar Associations of this Court two at Principal Seat at Jodhpur and one at Jaipur Bench, all the lawyers have decided to abstain from work and remain on strike as a mark of protest against the decision taken by the Full Court for declaring two working Saturdays in every month.
- The Hon'ble Apex Court in the case of **Ex-Capt. Harish Uppal Vs. Union of India & Another** reported in **2003 (2) SCC 45** has held that lawyers have no right to go on strike; or give a



call for boycott; or not even a token strike. The Hon'ble Apex Court has further expressed that lawyers abstaining from work held litigants at ransom. The functioning and working of the Court cannot be allowed to stop particularly for the matters involving personal liberty of the persons languished in the Jails.



3. Three Bar Associations of Lawyers have expressed their opposition for designating two regular working Saturdays in every month. Some representations have been reportedly submitted by these Bar Associations for redressal of their grievances. A Committee has already been constituted vide order dated 06.01.2026 to look into the matter and submit its report for taking appropriate decision. The decision is still awaited.

4. Going on strike and remaining absent from Court work is not a solution. All problems have solution and can be settled by debates and dialogues. Every challenge has a solution. Debates and dialogues can lead to a better understanding and also necessary for achieving any solutions.

5. A clear and specific note has been published in the cause-list dated 23.01.2026, which reads as under:-

"It is notified to all concerned that as per directions, all the working Saturdays, the Benches shall preferably take up old pending cases on voluntary basis as per request. Presence of counsels on aforesaid Saturdays shall not be mandatory."

6. In spite of above, a call of strike/remaining absent from work by the lawyers is not warranted.

7. When lawyers boycott the Courts, it directly violates the rights of the litigants to speedy justice, as guaranteed under Article 21 of the Constitution of India. Even an amendment has



also been proposed in the Advocates' Amendment Bill, 2025, which prohibits lawyers from boycotting or abstaining from Court's work. In a democratic setup, right to dissent, express opinions and protest against the decisions is a fundamental right, often derived from freedom of speech, expression and peaceful assembly. However, this right is not absolute and is generally expected to be exercised peacefully without causing public disorder or hampering the cause of justice. The protest must be made in a peaceful, non-violent and unarmed manner, as it has been defined under Article 19(1) (b) of the Constitution of India.

8. The right to protest must be balanced with the rights of other citizens such as right to life and personal liberty.

9. In the instant case, the personal life and liberty of the applicant is at stake, as he is languishing in Jail inspite of his release order, passed by this Court on 07.10.2025.

10. The instant application has been submitted by the accused-applicant, who has been found guilty and convicted for the offence punishable under Section 8/15 of the NDPS Act and sentence of 10 years has been awarded to him out of which he has already served 7 years and 11 months.

11. Considering the overall these facts and circumstances of the case, this Court vide order dated 07.10.2025 suspended the sentence of the applicant subject to the following conditions mentioned in Para 6, which reads as under:-

"6. Considering the above all facts and circumstances of the case and the proposition of law as laid down by the Hon'ble Apex Court in the case of Lakhwinder Singh (supra), the application for suspension of sentence filed by the



appellant stands allowed and the sentence awarded by the Court of Additional Sessions Judge Nasirabad, Ajmer vide judgment dated 10.10.2024 against the appellant Rajesh Kushwah shall remain suspended till final disposal of the instant appeal, subject to the condition that the appellant shall deposit the fine amount, as imposed by the Trial Court and he shall be released on bail provided he executes a personal bond in the sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of the learned trial Court for appearance before this Court on 10.11.2025 and whenever ordered to do so, till the disposal of the appeal on the conditions indicated below:-



1. That he shall appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant changes his place of residence and mobile number, he will give in writing his changed address and mobile number to the trial Court as well as 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.
4. Appellant shall deposit the fine amount as imposed by the learned trial Court.
5. In case the appellant is found involved in committing and repeating the same offence again, the State/complainant would be at liberty to move application for cancellation of bail."

12. The contents of the application indicate that the applicant could not deposit the fine amount of Rs.1 lakh because of his poverty.

13. It is a settled proposition of law while suspending the sentence of the accused-appellant, the Appellate Court can impose certain conditions, but if any condition to deposit of amount is imposed, while suspending the sentence of the accused and it is found that it is not possible for the accused to comply with the same, such condition may amount to defeat his right to appeal and order of conviction, which violates his rights of personal life and liberty as guaranteed under Article 21 of the Constitution of



India. This view has been taken by the Hon'ble Apex Court in the case of **Central Bureau of Investigation Vs. Ashok Sirpal** while deciding **Criminal Appeal No.4277/2024** in Para 8, which reads as under:-



"8. While suspending the sentence, especially the sentence of fine, the Appellate Court can impose conditions. Whether the order of suspension of the sentence of fine should be conditional or unconditional depends on the facts of each case and especially the nature of the offence. For example, when there is a sentence of fine imposed while convicting an accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, depending upon the facts of the case, the Appellate Court may impose a condition of depositing the fine amount or part thereof while suspending the sentence. However, the approach of the Court may be different in case of offences punishable under the IPC and cognate legislations. Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions. However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it. Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Article 21 of the Constitution.

14. Thus, in the considered opinion of this Court, poverty and penalty should not hinder an accused persons' right of life and personal liberty, who has been released from jail, as the Article 21 of the Constitution of India guarantees the life and liberty. If the applicant, in the present case, is not in a position to arrange the fine amount and has remained in custody inspite of his release order passed by this Court vide order dated 07.10.2025, it clearly amounts to violation of his personal right of life and liberty.



15. Considering the overall facts and circumstances of the case, the condition imposed by this Court qua deposition of fine amount of Rs.1 Lakh stands recalled and the Trial Court is directed to release the applicant forthwith, in terms of the other conditions imposed by this Court.

16. With the aforesaid observations, the interim application No.1/2026 stands allowed.

17. Before parting with this order, it is made clear that this order should not be treated as a precedent, in other cases, as it has been passed taking note of the peculiar facts and circumstances of the present case.

18. Let a copy of this order be sent to the Chairman/Secretary, Bar Council of India, New Delhi as well as Bar Council of Rajasthan, Jodhpur for taking appropriate steps for doing the needful.

(ANOOP KUMAR DHAND),J

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