

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 1377 of 2024**

Arising Out of PS. Case No.-194 Year-2020 Thana- SAMASTIPUR District- Samastipur

Chandeshwar Das @ Baba Ji @ Baba Jee, Son of Anandi Das @ Annadi Das,
Resident of Village - Bhamrupur, P.S. - Muffasil, District - Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rana Sanjay, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 02-07-2025

Heard Mr. Rana Sanjay, learned Advocate for the appellant and Mr. Dilip Kumar Sinha, learned APP for the Respondent-State.

2. The present appeal has been filed under Section 374 (2) read with 389 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code'), wherein the appellant has challenged the judgment of conviction dated 30.09.2024 and order of sentence dated 07.10.2024 rendered by learned District and Additional Sessions Judge-IV, Samastipur in Sessions Trial 102 of 2021, arising out of Samastipur Town P.S. Case No. 194 of 2020, whereby the concerned Trial Court has convicted the



appellant for commission of the offences punishable under Section 302 of Indian Penal Code and 27 of the Arms Act and has sentenced him to undergo rigorous imprisonment for life and a fine of Rs. 20,000/- for the offence under Section 302 of Indian Penal Code and in default of payment of fine to further undergo rigorous imprisonment for six months. He has been sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act. Both the sentences have been directed to run concurrently.

3. Learned counsel for the appellant would submit that this Court has admitted the appeal and, at present, learned counsel for the appellant prays for grant of bail and for suspension of sentence imposed by the Trial Court.

4. Learned counsel for the appellant has supplied the copy of the deposition of the prosecution witnesses and referred the same. Thereafter, he would mainly contend that in the present case though the informant, who is the mother of the deceased, has projected herself as eye-witness, in fact, from the evidence led by the prosecution, it transpires that P.W. 1 (informant) is not an eye-witness to the occurrence in question. Learned counsel has mainly placed reliance upon paragraphs 5 and 6 of the deposition of the said witness.



5. Learned counsel submits that there are major contradictions and inconsistencies in the deposition of the prosecution witnesses. Learned counsel for the appellant, thereafter, referred to deposition given by P.W. 2, investigating officer, who has conducted the investigation. It is submitted that from paragraphs 9 to 13 of the cross-examination of the said witness, it is revealed that in the CCTV footage as narrated by the said witness from the place of occurrence, it has been noticed that the informant and her daughter-in-law came from the house to the place of occurrence after the accused fled away from the place of occurrence. It is further submitted that the investigating officer has also stated that the present appellant was not seen in the CCTV footage. Learned counsel, on the basis of the aforesaid evidence led by the prosecution has mainly contended that the prosecution has failed to prove the case against the appellant beyond reasonable doubt, despite which the Trial Court has convicted the appellant and, therefore, this Court may release the appellant on bail and the sentence imposed by the Trial Court be suspended.

6. On the other hand, learned APP for the respondent-State has vehemently opposed the prayer for grant of bail and suspension of sentence of the appellant. Learned APP



for the State has also referred the deposition of the prosecution witnesses and, thereafter, contended that, in fact, the informant is the eye-witness of the occurrence in question and she has narrated in detail in her *examination-in-chief* with regard to the manner of occurrence. In fact, she has identified the accused including the appellant. It is further submitted that from the deposition given by P.W. 3, the doctor, who had conducted *post-mortem* on the dead body of the deceased, it is revealed that the deceased sustained 14 bullet injuries and, therefore, the deceased was killed in a brutal manner.

7. Learned APP for the respondent-State, thereafter, has referred the written objection filed on behalf of the respondent-State. It has been pointed out from Annexure-2 of the said written objection that other four FIRs have been filed against the present appellant and, thus, when the appellant is having antecedents, he may not be released on bail, otherwise, he will indulge into similar type of activity again. Learned APP, therefore, urged that the request for bail and for suspension of sentence may not be entertained.

8. We have considered the submissions canvassed by learned Advocates appearing for the parties. We have also perused the materials placed on record including the deposition



of the prosecution witnesses. From the submission canvassed by the learned counsel for the appellant, it transpires that the learned counsel has mainly contended that there are major contradictions and inconsistencies in the deposition of the prosecution witnesses. As per his submission, the informant is not an eye-witness and for that purpose he has placed reliance upon some of the paragraphs of the cross-examination of the said witness.

9. Similarly, learned counsel for the appellant has also placed reliance upon the deposition given by P.W. 2, investigating officer. From some of the paragraphs of his cross-examination, learned counsel has tried to submit that, in fact, the informant is not an eye-witness and the appellant was not present at the place of occurrence.

10. We are of the view that while considering the prayer under Section 389 of the Code of Criminal Procedure for suspension of sentence, this Court cannot re-appreciate the entire evidence in detail and thereby tried to find out certain loopholes on the part of the prosecution. It is not open for this Court to pick up the lacunae or loopholes here or there in the case of the prosecution.

11. At this stage, we would like to refer the recent



decision rendered by the Hon'ble Supreme Court dated 9th April 2025 in the case of *Janardan Ray Vs. The State of Bihar & Anr. ETC.* rendered in *Cr. Appeal Nos. 1892-1893 of 2025* arising out of *SLP (Crl.) Nos. 18326-18327 of 2024*. In the said case, the Hon'ble Supreme Court has placed reliance upon another reported decision rendered in the case of *Om Prakash Sahni Vs. Jai Shankar Chaudhary and Anr.*, reported in *(2023)6 SCC 123*. The Hon'ble Supreme Court has observed in the case of *Janardan Ray (Supra)* in paragraphs 6 and 7 as under:-

“6. In our opinion, the decision of this Court in the case of Om Prakash Sahni Vs. Jai Shankar Chaudhary and Anr. (2023) 6 SCC 123 clinches the issue involved in the present appeals. It has been observed while considering the scope of Section 389 of Cr.P.C as under:-

“30. In Kishori Lal v. Rupa [Kishori Lal v. Rupa, (2004) 7 SCC 638], this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows :

(SCC pp. 639-40, paras 4-6)

“4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the



relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. *The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.*

6. *The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”*

31. *In **Vijay Kumar v. Narendra** [**Vijay Kumar v. Narendra**, (2002) 9 SCC 364] and **Ramji Prasad v. Rattan Kumar Jaiswal** [**Ramji Prasad v. Rattan Kumar Jaiswal**, (2002) 9 SCC 366], it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In **Vijay Kumar v. Narendra** [**Vijay Kumar v. Narendra**, (2002) 9 SCC 364], it was held 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 the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.*

32. *The aforesaid view is reiterated by this Court in **Vasant Tukaram Pawar v. State of***



Maharashtra [Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281] and Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160].

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

7. Having regard to the aforesaid settled legal position, we are of the opinion that the High Court has committed gross error in appreciating the evidence already appreciated by the Trial Court at the time of considering the applications seeking suspension of sentence pending the appeal. Since this was a case of conviction under Section 302 IPC, the initial presumption available to the accused before conviction, would not be available to him. The High Court could not have suspended the sentence, reappreciating the evidence at the stage of Section 389 and trying to pick up a few lacunae or loopholes here or there in the case of prosecution. The consideration of High Court to the submission made on behalf of the accused that he had not misused the liberty during the trial or that the appeal was not likely to be heard in near future, could not be said to be the proper consideration for suspending the sentence of the accused,



who have been convicted for the serious offence under Section 302, IPC. It is only in rare and exceptional circumstances, the benefit of suspension of sentence should be granted by the appellate court to the accused convicted for the serious offence under Section 302, IPC.”

12. The Hon’ble Supreme Court, in the case of ***Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)*** reported in ***(2008) 5 Supreme Court Cases 230***, has observed in paragraph nos. 28 to 30 and 33 as under:-

“28. In Kashmira Singh, this Court stated; (SCC pp. 292-39, para 2)

"2. ...Now, the practice in this Court as also in many of the High Court has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person:

"We have admitted your appeal because we



think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence". (emphasis supplied)

29. *The other consideration, however, is equally important and relevant. When a person is convicted by an appellate Court, he cannot be said to be an 'innocent person' until the final decision is recorded by the superior Court in his favour.*

30. *Mr. Gopal Subramanyam, learned Addl. Solicitor General invited our attention to Akhilesh Kumar Sinha v. State of Bihar, (2000) 6 SCC 461, Vijay Kumar v. Narendra & Ors., (2002) 9 SCC 364, : JT 2004 Supp (1) SC 60, Ramji Prasad v. Rattan Kumar Jaiswal & Anr., (2002) 9 SCC 366, State of Haryana v. Hasmat, (2004) 6 SCC 175, Kishori Lal v. Rupa & Ors., (2004) 7 SCC 638 and State of Maharashtra v. Madhukar Wamanrao Smarth, (2008) 4 SCALE 412. In the above cases, it has been observed that once a person has been convicted, normally, an appellate Court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate Court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar 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 all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

33. On the facts and in the circumstances of the case, in our considered opinion, this is not a fit case to exercise power under Section 389 of the Code. Though the trial Court has acquitted the applicant-accused for the offences with which he was charged, the High Court reversed the order of acquittal and convicted him under Section 302, IPC and ordered him to undergo rigorous imprisonment for life. Being aggrieved by the said order, he has filed an appeal which has been admitted, is already on board and awaits final hearing. Hence, within 'measurable distance of time' the appeal is likely to be heard. Keeping in view the seriousness of offence, the manner in which the crime was said to have been committed and the gravity of offence, we are of the view that no case has been made out by the applicant-appellant for suspension of sentence and grant of bail. The application deserves to be dismissed and is accordingly dismissed.

13. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that it is not open for the High Court to pick up a few lacunae or loopholes here or there in the case of prosecution at the stage of considering requests made under Section 389 of the Code. It is not open for this Court to re-appreciate the evidence at the stage of Section 389 of the Code. Further, it is clear from the observation made



by the Hon'ble Supreme Court in both the aforesaid cases that while considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of the IPC, the Court should consider all the relevant factors like the nature of accusations made against the accused, the manner in which the crime is alleged to have been committed and the gravity of offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder. Further, it is only in rare and exceptional circumstances, the benefit of suspension of sentence should be granted by the Appellate Court to the accused convicted for the serious offence under Section 302 of the IPC.

14. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, we have considered the submissions canvassed by the learned counsels appearing for the parties. We have considered the nature of offence and the manner in which the incident took place. From the *post-mortem* report, as observed hereinabove, it is revealed that total 14 bullet injuries have been sustained by the deceased. Thus, in brutal manner, the deceased was killed by the assailants.

15. Learned counsel for the appellant has failed to point out that the present is an exceptional case in which this



Court has to exercise powers under Section 389 (1) of the Code.

16. It is also required to be observed at this stage that it is specific case of the prosecution in the written objection with details that there are four FIRs registered against the appellant. The appellant has not filed any counter to the said written objection filed on behalf of the State. Thus, we have considered the antecedents of the appellant also while considering his prayer for grant of bail or for suspension of sentence.

17. Looking to the aforesaid facts and circumstances of the present case, we are of the view that the present is not the fit case in which this Court should exercise the powers under Section 389 (1) of the Code.

18. Accordingly, the request made by the appellant for grant of bail and for suspension of sentence is rejected.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

khushbu/-

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