

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.167 of 2022**

Arising Out of PS. Case No.-98 Year-2019 Thana- DURGAWATI District- Kaimur (Bhabua)

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1. SUCHIT BIND Son of Dalsingar Bind Resident of Village- Gangapur (Sonaon), P.S.- Durgawati, Disrict- Kaimur at Bhabua.
2. Sechu Bind Son of Dalsingar Bind Resident of Village- Gangapur (Sonaon), P.S.- Durgawati, Disrict- Kaimur at Bhabua.
3. Abhimanyu Bind Son of Dalsingar Bind Resident of Village- Gangapur (Sonaon), P.S.- Durgawati, Disrict- Kaimur at Bhabua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Rajani Kant Pandey, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**  
**ORAL ORDER**

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

8      26-03-2025

**I.A. No. 2 of 2023**

The present I.A. has been filed by the applicant convict with a prayer that he may be released on bail and the sentence imposed by the trial court be suspended till final disposal of the appeal.

2. Heard Mr. Rajendra Narayan, learned Senior Advocate for the applicant, assisted by Mr. Rajni Kant Pandey, Mr. Ajay Kumar Thakur, learned advocate for the informant, assisted by Mrs. Vaishnavi Singh and Mr. Dilip Kumar Sinha,



learned A.P.P. for the respondent State.

3. Learned Senior Advocate for the applicant, at the outset, submitted that the applicant has been convicted for committing the offence punishable under Sections- 302 of I.P.C. and has been sentenced to undergo R.I. for life and to pay a fine of Rs. 20,000/- and, in default of payment of fine, he has been sentenced to undergo further S.I. for six months. It is further submitted that the applicant along with the two other co-convicts preferred Cr. Appeal (D.B.) No. 167 of 2022. In the said appeal, two other co-convicts, i.e. original appellant Nos. 2 and 3, had filed I.A. No. 1 of 2022 for suspension of sentence *qua* the said co-convicts and this Court, vide order dated 04.01.2023 released the said co-convicts on bail and the sentence *qua* the said co-convicts have been suspended.

3.1. It is further submitted that thereafter the present applicant filed the present I.A. for suspension of sentence. It has been contended that the Co-ordinate Bench of this Court, vide order dated 03.05.2023, allowed the I.A. and thereby the present applicant was ordered to be released on bail. Thereafter, the informant challenged the order dated 03.05.2023 passed by the Co-ordinate Bench of this Court in the present I.A. before the Hon'ble Supreme Court by filing Criminal



Appeal No(s). 673 of 2025. The Hon'ble Supreme Court set aside the order passed by this Court and remanded the matter to this Court with a direction that the present I.A. be disposed of preferably within a period of one month. Learned Senior Counsel referred the order dated 11.02.2025 passed by Hon'ble Supreme Court in Cr. Appeal No. 673 of 2025 filed by the informant. It is further submitted by the learned Senior Advocate that the Hon'ble Supreme Court has specifically clarified that they have not made any observation on merits of I.A. No. 02 of 2023.

4. At this stage, learned Senior Advocate submitted that as the order passed by this Court granting bail to the applicant is set aside, the applicant has surrendered before the Jail Authority on 24.03.2025 and he is in custody since then.

5. Thereafter the learned Senior Advocate has argued the case of the applicant on merits. Learned Senior Advocate would mainly submit that two other co-convicts have been released on bail and the order passed by this Court has not been interfered with by the Hon'ble Supreme Court and, therefore, on the ground of parity, case of the applicant be considered. Learned Senior Advocate further submits that as per the case of the informant, after initial altercation between the



parties, the present applicant went to his house and brought a *Gandasa* and thereafter gave blow with the same on the head of the father of the informant (deceased), as a result of which he became unconscious and fell to the ground and more than half portion of his head was broken. Learned Senior Advocate further submits that though the prosecution has projected P.W. Nos. 1, 2 and 4 as eye-witnesses, there are major contradictions and inconsistencies in the deposition of the said witnesses. It is further contended that even the informant, P.W. 6, has admitted in para-30 of his cross-examination that the applicant gave blow with the sharp edged portion of the *Gandasa*. Thus, learned Senior Advocate contends that it is the specific case of the informant that the applicant gave blow with the sharp edged portion of *Gandasa* on the head of the deceased, however, from the deposition given by P.W.3, the doctor who had given initial treatment to the deceased, it is revealed that the injuries sustained by the deceased were caused by a hard and blunt object. Learned Senior Advocate would further contend that in cross-examination the said doctor too has admitted that scratch, abrasion and laceration, as mentioned in the injury report, can be caused by falling on the hard surface. At this stage, learned Senior Advocate referred the cross F.I.R. filed by the present



applicant against the deceased and the informant. In the said F.I.R. the informant (applicant herein), specifically stated that the deceased fell to the ground and in the said incident he sustained injury on his head.

6. Learned Senior Advocate would thereafter refer the deposition given by P.W. 10, the Investigating Officer, and submitted that in para-24 of the cross-examination the I.O. has stated that he did not find any blood or blood-stain at the place of occurrence.

7. Learned Senior Advocate, therefore, urged that the prosecution has stated a different story with regard to the incident in question and the manner in which the incident took place. The prosecution has failed to prove the case against the applicant beyond reasonable doubt, despite which the trial court has passed the impugned judgment and order and, therefore, the applicant be released on bail and the sentence imposed by the trial court be suspended. At this stage, learned Senior Counsel has also submitted that the applicant is in custody since 12.04.2019, i.e. since last approximately four years and, therefore, he may be released on bail.

8. On the other hand, Mr. Ajay Kumar Thakur, learned appearing for the informant has vehemently opposed the



prayer for suspension of sentence and for grant of bail. Learned counsel for the informant would mainly contend that there are eye-witnesses to the incident in question and all the eye-witnesses have supported the case of the prosecution. It is further submitted that the medical evidence also supports the version given by the eye-witnesses and, therefore, merely because there are minor contradictions or minor discrepancy in the deposition of the prosecution-witnesses, benefit of the same may not be given to the applicant. It is also submitted that, in the present case, the applicant herein has also filed the cross F.I.R./counter case in which he has narrated the incident in a different manner. Thus, from the said F.I.R., which has been duly exhibited, the applicant cannot deny his presence at the place of occurrence. Further, even from the F.I.R. filed by the present applicant, it is revealed that, as per the case of the present applicant, deceased died because he fell down to the ground, as a result of which he sustained such injury. However, it is revealed that from the deposition given by P.W. 3 that the injuries sustained by the deceased were caused by hard and blunt substance. Thus, the medical evidence supports the version of the prosecution eye-witnesses.

9. Learned counsel would further contend that the



role attributed to the co-convicts is different than the role attributed to the present applicant and the case of the applicant is on a different footing. Thus, the ground of parity would not be available to the present applicant.

10. Mr. Dilip Kumar Sinha, learned A.P.P. supports the submission canvassed by the learned counsel for the informant. Learned A.P.P. also submits that there is sufficient evidence led by the prosecution from which it is proved before the trial court that the applicant has committed the alleged offences. Thus, the trial court has rightly convicted the applicant herein. It is further submitted that the applicant has been sentenced to suffer life imprisonment and, therefore, merely because the applicant is in custody for last four years, he may not be released on bail, as prayed for.

11. We have considered the submissions canvassed by the learned advocates. We have also perused the material placed on record as well as the trial court record. *Prima facie*, it would emerge that the informant has lodged the F.I.R. in which he has mainly alleged that on 11.04.2019, at 09.30 hours, the informant was cleaning his Tavera Car when accused Suchit Bind, Sechu Bind and Abhimanyu Bind, all the three sons of Dal Singar Bind, forbade the cleaning and started abusing.



Thereafter, they resorted to beating the informant brutally. His father came from the field and tried to pacify the matter, but accused Suchit Bind brought a *Gandasa* from his house and gave a blow with the same on the head of his father, as a result of which his father fell unconscious on the ground. He was not in a position to speak. More than half portion of his head had got fractured. They rushed him to Primary Health Centre, Durgawati from where he was referred to Varanasi Trauma Centre for better treatment.

12. Thus, from the case of the informant, *prima facie* it can be said that the informant has mainly alleged against the present applicant that he went to his house and brought a *Gandasa* and thereafter gave blow with the same on the head of the deceased. Thus, so far as the two other co-convicts are concerned, no such allegation has been levelled against them. It is true that the other two co-convicts have been released on bail, however, case of the applicant is on a different footing and, therefore, ground of parity would not be available to the present applicant.

13. We have also gone through the deposition given by the prosecution-witnesses, including the eye-witnesses. Even the informant is an eye-witness, as projected by the prosecution.



The informant is P.W. 6 who has supported the case of the prosecution. P.W. 6, in his examination-in-chief has specifically deposed with regard to the manner in which the incident took place and the role played by the present applicant in the said incident. Now, learned counsel for the applicant has contended that during cross-examination, at para-13, P.W. 6 has stated that the applicant gave blow with the sharp edged portion of *Gandasa*, however, there is no corresponding injury found when P.W. 3 has examined the injured (deceased). We are, *prima facie*, of the view that, at this stage, we cannot re-appreciate the entire evidence and consider the aspect of minor discrepancies and/or contradictions in the deposition of the prosecution-witnesses.

14. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr.**, reported in (2023) 6 SCC 123, in which the Hon'ble Supreme Court has observed in para-33 as under:-

“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.”

15. Thus, from the aforesaid observation made by the Hon’ble Supreme Court it can be said that the Appellate Court should not re-appreciate evidence at the stage of Section 389 Cr.P.C. and try to pick up a few *lacunae* or loopholes here or there in the case of the prosecution.

16. Keeping in view the aforesaid observation made by the Hon’ble Supreme Court, if the submission canvassed by the learned Senior Advocate for the applicant is examined, we are of the view that, at this stage, while deciding the prayer for suspension of sentence of the present applicant,



minor lacunae or loopholes of the prosecution cannot be examined.

17. At this stage, we would like to refer the deposition given by P.W. 3, the doctor who had given treatment to the deceased. The said witness has specifically stated that when he had examined the injured (deceased), he found lacerated wound on right parietal region of skull size 6"x1"x muscle deep with bleeding and vomiting. He also found lacerated wound on left parietal region of skull 2"x1/2"x muscle deep with bleeding. He has further stated that all injuries are caused by hard and blunt object. In supplementary report also, the said witness has stated about fracture of right parietal bone of skull.

17.1. At this stage, it is also relevant to note that P.W.3 also examined the informant, i.e. P.W. 6. The said witness has also narrated with regard to the injury sustained by the informant. Thus, from the aforesaid deposition given by the doctor, i.e. P.W. 3, we are of the view that the medical evidence supports the version given by the informant. Further, the informant also sustained injury in the incident in question and, therefore, P.W.6, the informant, is the injured eye-witness. *Prima facie* and ordinarily, when the injured eye-witness gives



deposition implicating the applicant, the same cannot be discarded merely because the said injured eye-witness is a relative of the deceased.

18. At this stage, we would also like to refer the cross F.I.R./cross case filed by the present applicant. The cross F.I.R./cross case filed by the present applicant is duly exhibited. In the said F.I.R., the present applicant had narrated about the incident in question in a different manner. As per his case, the deceased fell into the drainage and in the said incident his head got fractured. Thus, from the said F.I.R. filed by the applicant himself, *prima facie*, it can be said that the applicant was present at the place of incident on the date and at the time of the incident. Therefore, he cannot dispute his presence at the said place. The only aspect is that he had narrated the incident in a different manner. At this stage, it is pertinent to note that P.W. 3, doctor, has specifically deposed that the deceased sustained injury which was caused by a hard and blunt object. Even otherwise, it is the defence of the applicant that because the deceased fell into the drainage, he sustained injury. However, at this stage, such a defence cannot be examined in detail. Even otherwise, in the incident in question, as observed hereinabove, the informant also sustained injury and he got treated by P.W. 3.



19. The trial court has convicted the applicant for committing the offence punishable under Section-302 of I.P.C. He has been sentenced to suffer life imprisonment. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)**, reported in **(2008) 5 SCC 230**, in which the Hon'ble Supreme Court has observed in para-30 as under:-

“30. Mr Gopal Subramaniam, learned Addl. Solicitor General invited our attention to *Akhilesh Kumar Sinha v. State of Bihar* [(2000) 6 SCC 461 : 2000 SCC (Cri) 1126] , *Vijay Kumar v. Narendra* [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] , *Ramji Prasad v. Rattan Kumar Jaiswal* [(2002) 9 SCC 366 : 2003 SCC (Cri) 1197 : JT (2000) 7 SC 477] , *State of Haryana v. Hasmat* [(2004) 6 SCC 175 : 2004 SCC (Cri) 1757 : JT (2004) 6 SC 6] , *Kishori Lal v. Rupa* [(2004) 7 SCC 638 : 2004 SCC (Cri) 2021 : JT (2004) 8 SC 317] and *State of Maharashtra v. Madhukar Wamanrao Smarth* [(2008) 5 SCC 721 : (2008) 4 Scale 412 : JT (2008) 4 SC 461] . 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* [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] 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.”

20. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that while considering the prayer for bail in a case involving serious offence of murder punishable under Section-302 of I.P.C., the Court should consider all 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 desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder. Further, the normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that suspension of sentence can be granted.

21. Keeping in view the aforesaid decision rendered by the Hon'ble Supreme Court, if the submissions canvassed by learned advocates appearing for the parties are examined, we are of the view that the present is not a fit case in



which powers under Section-389 of Cr.P.C. are required to be exercised in favour of the present applicant and thereby suspend the sentence of the present applicant.

22. We are of the view that no case has been made out by the applicant/appellant for suspension of sentence and grant of bail on merits and, therefore, merely because the applicant is in custody for last four years, he cannot be released on bail. The application deserves to be dismissed and is, accordingly, dismissed.

**(Vipul M. Pancholi, J)**

**(Alok Kumar Pandey, J)**

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