

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.344 of 2022**

Arising Out of PS. Case No.-704 Year-2017 Thana- BIHTA District- Patna

PAPPU SINGH

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

For the Appellant	:	Mr. Sanjay Singh, Senior Advocate Mr. Awadesh Kumar, Advocate
For the Respondent State:		Mr. Manish Kumar No.2, A.P.P.
For the Informant	:	Mr. Sanjay Kumar, Advocate Pushendra Priyadarshi, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

and

**HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

17 28-08-2023

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

This interlocutory application has been filed under Section 389(1) of the CrPC for suspension of sentence and release of the appellant-petitioner on bail during the pendency of this appeal.

2. We have heard Mr. Sanjay Singh, learned Senior Counsel appearing on behalf of the appellant, Mr. Manish Kumar No. 2, learned Additional Public Prosecutor representing the State and Mr. Sanjay Kumar, learned counsel for the informant.

3. Mr. Sanjay Singh, learned Senior Counsel



appearing on behalf of the appellant has submitted that the finding of the trial court is based on wrong appreciation of the evidence adduced at the trial. He has submitted that the appellant has fair chance of acquittal, if this Court re-appreciates the prosecution's evidence. He has argued that the appellant's conviction is only with the aid of Section 120B of the IPC and there is no circumstance to prove the appellant's role in commission of the offence.

4. Mr. Manish Kumar No. 2, learned Additional Public Prosecutor representing the State, on the other hand, has opposed the prayer for bail and has submitted that the appellant's complicity has been established at the trial based on call detail reports, which were duly proved by the nodal officers of the telecom company (PW 7 and PW 8). He has referred to the statement made in paragraph 13 of a written objection filed in this case under the first *proviso* to Section 389(1) of the CrPC, opposing prayer for suspension of sentence, which contains the appellant's criminal antecedent, which are as under:

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*“(i) Bihta P.S. Case No. 292 of 2003 under Sections 387, 307, 120(B) and 34 of the IPC and 27 of the Arms Act.*

*(ii) Bihta P.S. Case No. 296 of 2003 under Sections 386, 120(B) and 34 of the IPC.*

*(iii) Bihta P.S. Case No. 24 of 2004*



*under Sections 302/307/34 of the IPC and 27 of the Arms Act.*

*(iv) Fatuha P.S. Case No. 137 of 2003 under Section 414 of the IPC.*

*(v) G.R.P. Danapur P.S. Case No. 01/1997.*

*(vi) S. Tr. No. 49 of 2006 pending the court of Additional District and Sessions Judge-Vth, Danapur.*

*(vii) Bihta P.S. Case No. 204 of 2005 pending in the court of Judicial Magistrate-1st Class for trial.*

*(viii) The CCA proposal had also been sent against the petitioner.”*

5. After having perused the impugned judgment and order of the trial court as well as the lower court's records, it cannot be concluded, at this stage, that the appellant has fair chance of acquittal. The submissions, which have been made on behalf of the appellant, will have to be looked into at the time of final hearing of the appeal.

6. Reference may be made in this regard to a recent decision rendered on 02.05.2023, in **Criminal Appeal No. 1331-1332 of 2023 (Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr.)**, by the Supreme Court, relevant portion of which reads as under:-

*“...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 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach...*

7. Considering the appellant's criminal antecedent, as noted above, and the observations made by the Supreme Court, reproduced hereinabove, we are not inclined to accede to the prayer for suspension of sentence at this stage. We do not find any palpable legal infirmity requiring this Court to exercise power under Section 389(1) of the CrPC.

8. Appellant's prayer for suspension of the sentence is accordingly rejected.

9. The appellant shall, however, be at liberty to renew his prayer of suspension of sentence after one year, if, in the meanwhile, the appeal is not taken up for final hearing, despite steps having been taken to expedite the hearing of the appeal.

**(Chakradhari Sharan Singh, J)**

**(Nawneet Kumar Pandey, J)**

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