

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Sheet****CRA No.1114 of 2017**

- Sunil Mandal @ Bablu S/o Dhaneshwar Mandal, Aged About 25 Years R/o Danteshwari Ward Jagdalpur, District Bastar, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Police Station Kotwali, Jagdalpur, District Bastar, Chhattisgarh., Chhattisgarh

---- Respondent**CRA No.1549 of 2017**

- Kishan Lohana S/o Chunnilal Lohana Aged About 20 Years R/o Dharampura Navoday Vidyalaya Jagdalpur District Bastar Chhattisgarh. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer Police Station Kotwali Jagdalpur District Bastar Chhattisgarh. , Chhattisgarh

---- Respondent**Division Bench :-**

Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Arvind Singh Chandel

24.07.2023	Smt. Savita Tiwari and Shri Vikash A. Shrivastava, counsel for respective appellant. Shri Ayaz Naved, GA for the State. Heard on applications for suspension of sentence and grant of bail filed on behalf of both the appellants i.e. Sunil Mandal and Kishan Lohana in respective appeals (Cr.A.No.1114 & 1549 of 2017). As both the appellants have been convicted and sentenced by the learned

trial Court vide common judgment dated 19.06.2017, the aforesaid bail applications are being decided by this common order.

This is second bail application with regard to appellant-Sunil Mandal in Criminal Appeal No.1114 of 2017 and third bail application with regard to appellant Kishan Lohana in Criminal Appeal No.1549 of 2017.

By the impugned judgment of conviction and order of sentence dated 19.06.2017 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.10/2017, the appellants (Sunil Mandal and Kishan Lohana) have been convicted and sentenced as under:-

Conviction	Sentence
(Sunil Mandal) Under Section 302 of the IPC	Life Imprisonment and fine of Rs.1,000/- and in default of payment of fine, he has to undergo additional imprisonment for one month
(Kishan Lohana) Under Section 302/34 of the IPC	Life Imprisonment and fine of Rs.1,000/- and in default of payment of fine, he has to undergo additional imprisonment for one month

Learned counsel for the respective appellant submits that earlier bail applications filed on behalf of both the appellants were not decided on merits and applications were dismissed as withdrawn. It is submitted by the the appellants that without there being any sufficient and clinching evidence available on record, the learned trial Court has wrongly convicted the appellants as aforesaid. Learned counsel for the appellants submitted that the conviction of the appellants is based on the statement of Dhan Singh Sahu, PW-3, father of the deceased, before whom, the oral dying declaration has been given by the deceased. Further referring to the statement of Dr. S. N. Agrawal, PW-13 and Sub Inspector, Pramod Kumar Shrivastava, PW-12, it is argued by learned counsel for the appellants that according to the statement made by these witnesses, when the deceased was admitted in the hospital, at that time, he was unconscious and before them, no oral dying declaration has been made by the deceased, therefore, the statement made by the father of the deceased i.e. Dhan Singh Sahu, PW-3 is suspicious. It is further submitted that the eye-witness Neeraj Kumar Sahu, PW-1 has also not supported the case of the prosecution. It is lastly submitted by learned counsel for

the appellants that the appellants are in jail since 15.10.2016 and thereby, they have already undergone more 6 years and 9 months of jail sentence and hearing of these appeals will likely to take some more time, therefore, it is prayed that the appellants may be released on bail.

On the other hand, learned State counsel opposed the bail application on the submission that the learned trial Court has rightly convicted and sentenced the appellants on the basis of evidence available on record.

We have heard learned counsel for the parties and perused the entire record carefully.

Taking into consideration the submission of learned counsel for the parties, particularly the statements of Dr. S. N. Agrawal, PW-13 and Sub Inspector, Pramod Kumar Shrivastava, PW-12, we are of the view that this is a fit case, in which, the appellants are entitled to be released on bail.

Accordingly, the applications for suspension of sentence and grant of bail filed on behalf of both the appellants i.e. Sunil Mandal and Kishan Lohana in respective appeals (Cr.A.No.1114 & 1549 of 2017) are allowed. It is directed that the substantive jail sentence imposed upon the appellants shall remain suspended during the pendency of this appeal and they shall be released on bail on each of them furnishing a personal bond of Rs.25,000/- along with one surety of like sum to the satisfaction of the concerned trial Court for their appearance before the Registry of this Court on **28.08.2023** and, thereafter, they shall continue to appear before the concerned trial Court on all such further dates as are given to them by the said Court in that behalf, till final disposal of this appeal.

Post these matters for final hearing in its turn.

Certified copy, as per rules.

SD/-
(Sanjay S. Agrawal)
Judge

SD/-
(Arvind Singh Chandel)
Judge