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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 190/2025**

MR. SAMRAJ @ FADHU (IN JC)Appellant

Through: Mr. M Hasibuddin, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent

Through: Mr. Ritesh Bahari, APP for the State
with Ms. Divya Yadav, Mr. Lalit
Luthra, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

% **07.04.2025**

CRL.M.(BAIL) 325/2025 in CRL.A. 190/2025

1. The present application has been filed by the Applicant/Appellant under Section 430 of BNSS, 2023 seeking suspension of sentence and release of the Appellant on bail during pendency of the instant appeal.
2. This Court *vide* Order dated 14.02.2025 has admitted the appeal.
3. The present appeal has been filed against the Judgment on conviction dated 25.11.2024 and the Order on Sentence dated 10.02.2025, passed by the learned Additional Sessions Judge (FTC) 01, South District, Saket Courts in SC No.7363/2016. By the Judgment on conviction the Appellant has been convicted for offences under Sections 302 IPC & 25/27 of the Arms Act in FIR No.796/2014, registered at Police Station Ambedkar



Nagar. By the Order on Sentence dated 10.02.2025, the Appellant has been sentenced to undergo rigorous imprisonment for life along with fine of Rs.30,000/- for the offence committed under Section 302 IPC. For the offence committed under Sections 25/27 of the Arms Act the Appellant has been sentenced to the period already undergone.

4. Nominal roll of the Appellant is on record. The nominal roll indicates that the Appellant has undergone eight years, eleven years and twelve days in incarceration.

5. The Appellant has been convicted for the offence committed under Section 302 IPC. The scope of Section 389 Cr.P.C and the parameters that have to be kept in mind while granting suspension of sentence has been stipulated by the Supreme Court in a number of judgments. It is well settled now that there is a difference between the factors that have to be taken into consideration for grant of bail under Section 439 Cr.P.C prior to conviction and grant of suspension of sentence under Section 389 Cr.P.C which is post-conviction for the simple reason that presumption of innocence is no longer applicable to the person who stands convicted for an offence.

6. The Apex Court in Atul Tripathi v. State of U.P., (2014) 9 SCC 177, has observed that Section 389 Cr.P.C is more stringent than Section 439 Cr.P.C. The said judgment lays down that the Court before suspending the sentence of a person who has been convicted has to take into account the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc.

7. The difference between Section 389 Cr.P.C and Section 439 Cr.P.C has also been summarised very succinctly by the Apex Court in Preet Pal



Singh v. State of U.P., (2020) 8 SCC 645, wherein the Supreme Court has observed as under:

"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC."
(emphasis supplied)

8. Looking at the fact that the offence committed by the Appellant is heinous and looking at the time spent by the Appellant in incarceration and the total period of imprisonment, this Court is not inclined to suspend the sentence at this juncture.

9. The Appellant is at liberty to file a fresh application for suspension of sentence at a later point of time.



10. The application is dismissed.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

APRIL 07, 2025

Rahul