

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA  
AND  
HON'BLE JUSTICE M.G. PRIYADARSINI**

**I.A.No.1 of 2024  
IN  
CrI.A.No.222 of 2023**

**ORDER:** *(Per Justice Moushumi Bhattacharya)*

The instant Application is filed by the petitioner/accused No.1 under section 389(1) of The Criminal Procedure Code, 1973 (Cr.P.C.) seeking suspension of the sentence of life imprisonment imposed on the petitioner by the impugned judgment dated 03.03.2023 in S.C.No.62 of 2019 on the file of the Principal Sessions Judge, Karimnagar, and for release of the petitioner on bail.

2. The petitioner's earlier application for suspension of sentence was rejected by a Co-ordinate Bench on 11.08.2023.

3. The point which we have to deal with first is whether a second application for suspension of sentence is maintainable under section 389(1) of the Cr.P.C. which empowers the Appellate Court to suspend the sentence and release the accused on bail for reasons recorded in writing.

4. We have heard learned Senior Counsel appearing for the petitioner as well as the learned Additional Public Prosecutor

(APP) on this issue. This issue was considered by the Supreme Court in *Babu Singh v. State of U.P.*<sup>1</sup> where the petitioners preferred a second application for bail after rejection of the first application, 6 months prior to the second application. *Babu Singh* (supra) was relied on by the Allahabad High Court in *Dal Chand v. State of U.P.*<sup>2</sup>.

5. There is no provision in The Code of Criminal Procedure, 1973 which bars a second application for suspension of sentence. The only requirement, as settled by the Courts, is that the reasons for considering the second bail application must clearly be recorded and the Court must appropriately exercise its discretion in doing so.

6. We find in the earlier order of rejection that the Co-ordinate Bench relied on *Omprakash Sahni v. Jai Shankar Chaudhary*<sup>3</sup> to hold that all the contentions and grounds raised by the petitioner/accused No.1 can finally be considered at the time of hearing of the Appeal and further recorded that the Trial Court had considered the overt acts committed by the petitioner in the offence which is grievous in nature.

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<sup>1</sup>(1978) 1 SCC 579

<sup>2</sup> 2000 CRI.L.J. 4579

<sup>3</sup> (2023) 6 SCC 123

7. Learned Senior Counsel appearing for the petitioner informs the Court that several crucial points were not argued before the Co-ordinate Bench and hence are not reflected in the order of rejection. We find substance in this contention since the only reason given by the Co-ordinate Bench was that the Trial Court convicted the petitioner/accused No.1 of a serious offence of murder under section 302 of the Indian Penal Code, 1860.

8. We accordingly hold that the present I.A is maintainable.

9. We now proceed to consider the issues raised on behalf of the petitioner/accused No.1 for suspension of sentence.

10. The Trial Court found the entire case to be based on circumstantial evidence but concluded that the prosecution was able to prove that the petitioner/accused No.1 killed the deceased beyond reasonable doubt. The reasons stated in the impugned order for coming to the said conclusion are as follows:

10.1. The Trial Court relied on the seizure of Material Objects (M.O.1- 1 pair of chappal, M.O.2 - Timex wristwatch, M.O.3 - stones (3 Nos.), M.O.4 - blood-stained earth and M.O.5 - control earth) and the evidence given by P.W.9 and P.Ws.12 and 13 (the 2 Panchnama witnesses). The Trial Court also relied on the

confession of the petitioner/accused No.1 before P.W.19 in the presence of P.W.15 and L.W.27. According to the Trial Court, M.Os.11 to 17 were seized at the instance of the petitioner/accused No.1 at the outskirts of Kothapalli Village.

11. The recovery of the Material Objects (M.Os) at the instance of the petitioner/accused No.1 was the primary reason which weighed with the Trial Court. The Trial Court held that the accused No.1 not being able to give any explanation with regard to the bloodstains on his clothes was a further point in favour of the prosecution even if it is assumed that the knife and cell phone of the deceased were found at the scene of the offence.

12. We have considered the entire material for the purpose of suspension of the sentence and find that admittedly there was no eyewitness to the incident but the Trial Court relied on the lack of explanation on the part of the petitioner/accused No.1 with regard to the bloodstains found on his clothes. We should state that the issue with regard to recovery of bloodstained clothes from the house of the sister-in-law of the accused was

discounted by the Supreme Court: *Raja Naykar v. State of Chattisgarh*<sup>4</sup>.

13. The Trial Court held that the entire case rests on circumstantial evidence.

14. Circumstantial evidence essentially means circumstances from which the conclusion of guilt can be established and the facts established from the facts/evidence are consistent with the hypothesis of the guilt of the accused. The consensus of the Courts is that the chain of evidence should be so complete so as not to leave any reasonable ground to hold that the accused is innocent: *Hanumant v. State of Madhya Pradesh*<sup>5</sup>. The cardinal principle of criminal jurisdiction is that a case can be said to be proved only when there is certain and explicit evidence since no person should be convicted purely on moral conclusion: *Sharad Birdhichand Sarda v. State of Maharashtra*<sup>6</sup> - A 3 Member Bench of the Supreme Court laid down the 5 golden principles to constitute the benchmark of a case based on circumstantial evidence.

15. Section 27 of The Indian Evidence Act, 1872 provides for the extent to which information received from the accused in the

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<sup>4</sup> (2024) 3 SCC 481

<sup>5</sup> AIR 1952 SC 343

<sup>6</sup> (1984) 4 SCC 116

custody of the police may be proved. The Privy Council in *Pakala Narayana Swami v. The King-Emperor*<sup>7</sup> construed section 27 of The Indian Evidence Act, 1872 and held that any fact which is discovered in consequence of information received from an accused of any offence whilst in the custody of a police may not be proved.

16. The information must also cause the discovery of the fact and must relate distinctly to the fact discovered: *Earabhadrappe v. State of Karnataka*<sup>8</sup>. In *Pulukuri Kotayya v. King Emperor*<sup>9</sup> it was held that it was fallacious to treat the fact discovered within section 27 of the Evidence Act as equivalent to the object produced since the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to the fact. Information as to past user or the past history of the object produced is not related to the discovery of the object in the setting in which it is discovered. In *Subramanya v. State of Karnataka*<sup>10</sup>, the Supreme Court further cautioned that the conduct of the accused alone cannot form the basis of conviction, though the conduct may be relevant

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<sup>7</sup> 43 C.W.N. 473 (Privy Council)

<sup>8</sup> (1983) 2 SCC 330

<sup>9</sup> AIR 1947 PC 67

<sup>10</sup> (2023) 11 SCC 255

under section 8 of the Evidence Act with regard to motive or preparation for any relevant fact.

17. In the instant case, *prima facie*, there is a missing link between the circumstantial evidence relied upon by the prosecution and the conclusion of guilt on the part of the petitioner/accused No.1 with regard to causing the death of the deceased. The Trial Court glossed over the fact that the knife and phone of the deceased were recovered from the scene of offence and not at the instance of the petitioner/accused No.1. The recovery of the other M.Os. would fall within section 27 of The Indian Evidence Act, 1872, which provides limits to the use of information for the purpose of a confession made by a person in the custody of the police, the case law has been referred to above.

18. The Supreme Court in *Omprakash Sahni (supra)* held that an accused should not be kept behind bars for a long time if there is a fair chance of acquittal particularly where the Criminal Appeal takes a very long time for a decision.

19. In the present case, the Sessions Case is of 2019, the impugned judgment was pronounced on 03.03.2023 and the Criminal Appeal was considered by the Court for the first time in July, 2024.

20. For the reasons as stated above, we are of the view that the petitioner/accused No.1 has made out a case for suspension of the sentence pending hearing of the Criminal Appeal.

21. Accordingly, the impugned judgment of sentence insofar as it relates to the petitioner/accused No.1 shall remain suspended and the petitioner/accused No.1 shall be released on bail on and from 07.09.2024 till the disposal of the Appeal on the following conditions:

- i. The petitioner/accused No.1 shall furnish a bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom should be a local, subject to the satisfaction of the II Additional Magistrate of First Class, Huzurabad.
- ii. The petitioner shall report to the local police station once every fortnight.
- iii. The petitioner shall not leave the jurisdiction of the local police station without the permission of the Officer-in-Charge of the concerned local police station.
- iv. The petitioner shall appear at the hearing of the Appeal whenever required to do so.

- v. In case of change of address, the petitioner shall inform the same to the Officer-in-Charge of the jurisdictional police station as well as the II Additional Magistrate of First Class, Huzurabad.

22. I.A.No.1 of 2024 is accordingly allowed and disposed of.

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**MOUSHUMI BHATTACHARYA, J**

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**M.G.PRIYADARSINI, J**

September 6, 2024  
*va/bms*