

Mahender Singh Vs. State of H.P.

Cr. Appeal (C-SB) No. 28 of 2025

Reserved on: 13.10.2025

25.11.2025 Present: Mr Deepak Kaushal, Senior Advocate, with
Mr Aditya Chauhan, Advocate, for the
applicant/appellant.

Mr Lokender Kutlehria, Additional Advocate
General, for the respondent-State.

Cr. MP No. 4150 of 2025

The applicant/appellant has filed the present application for seeking suspension of the sentence awarded by the learned Additional Sessions Judge, Paonta Sahib, District Sirmour, H.P. (learned Trial Court) vide order dated 12.9.2025, whereby the applicant/appellant was sentenced to undergo simple imprisonment for five years, pay a fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for six months for the commission of an offence punishable under Section 307 of the Indian Penal Code (IPC).

2. It has been asserted that the applicant/appellant has filed an appeal against the judgment of conviction and order of sentence. The applicant/appellant has undergone approximately four months of judicial custody. The judgment suffers from various infirmities and factual errors. The prosecution had failed to prove the specific intent/knowledge of the applicant/appellant. The statement

of Gurjeet Singh (PW8) shows that 7-8 family members of the applicant/appellant were present in the marriage ceremony, who were actively participating in the Jago celebration. This rules out the homicidal intent, as no reasonable person would deliberately attempt to kill his relatives in a public gathering. Most of the injured persons did not support the prosecution's case, and Gurjeet Singh (PW8) admitted personal rivalry between him and the applicant/appellant arising out of an earlier incident of burning the motorcycle of Gurjeet's friend. This admission casts serious doubts on the credibility of Gurjeet Singh's testimony. The applicant/appellant was attacked by the friends of Gurjeet, who damaged the windshield of his vehicle. The applicant/appellant fled from the spot in panic to save his life. This defence was ignored by the learned Trial Court without any justification. No person deposed about any motive against the applicant/appellant, and the defence version that he was attacked by some persons and had to speed away in his vehicle to save his life is probable. Several witnesses stated that a stampede occurred during the incident. The Medical Officer also admitted in his cross-examination that the injuries noticed by him could have been caused during the stampede. The incident occurred abruptly, and the applicant/appellant had to speed away from the spot. Gurjeet Singh filed a complaint portraying the

applicant/appellant as an aggressor. The defence version could not have been rejected because the matter was not reported to the police. Therefore, it was prayed that the application be allowed and the sentence awarded by the learned Trial Court be suspended during the pendency of the appeal.

3. The application is opposed by filing a reply, making preliminary submission regarding the lack of maintainability. It was asserted that the applicant is seeking rehearing and re-appreciation of evidence, which is impermissible at this stage. Gurdeep Singh lodged an FIR stating that the applicant recklessly drove his vehicle during a marriage ceremony in Village Barotiwala. The vehicle struck multiple motorcycles and participants, which caused grievous injuries to several individuals. The police investigated the matter and filed a charge sheet before the learned Trial Court. Learned Trial Court held the applicant guilty of the commission of offences punishable under Sections 307 and 325 of the IPC. The intent of the applicant/appellant could be inferred from the fact that he drove his vehicle into the crowd, causing grievous injuries. The failure to report the matter to the police made the defence of the applicant/appellant suspect. Therefore, it was prayed that the present application be dismissed.

4. I have heard Mr Deepak Kaushal, learned Senior Counsel assisted by Mr Aditya Chauhan, learned counsel for the applicant/appellant and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

5. Mr Deepak Kaushal, learned Senior Counsel for the applicant/appellant, submitted that the learned Trial Court erred in appreciating the material on record. The evidence on record proved that the vehicle being driven by the applicant/appellant was attacked, and the applicant/appellant had to speed away to save his life. The relatives of the applicant/appellant were present during the marriage ceremony, and it is highly inconceivable that the applicant/appellant would have driven his vehicle into the crowd with the intent to murder the people when his relatives were present at the function. Many of the injured did not support the prosecution's case. The applicant/appellant has fair chances of his acquittal; therefore, he prayed that the present application be allowed and the sentence awarded by the learned Trial Court be suspended.

6. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent-State, submitted that the applicant/appellant was held guilty of the commission of

offences punishable under Sections 307 and 325 of the IPC after the full-dressed trial. The pleas taken by the applicant/appellant were negated by the learned Trial Court. The applicant/appellant has no arguable case in his favour; therefore, he prayed that the present application be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. It was submitted that the applicant was on bail during the trial, and he did not misuse the liberty extended to him; therefore, he is entitled to the bail as a matter of right. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *State of Haryana v. Hasmat*, (2004) 6 SCC 175: 2004 SCC (Cri) 1757: 2004 SCC OnLine SC 741 that the mere fact that the accused was on bail during the trial and he had not misused his liberty is no reason to suspend the sentence. It was observed at page 177:

“8. The learned Sessions Judge, Gurgaon, by a judgment dated 24-10-2001, had found the accused-respondent guilty. Criminal Appeal No. 100- DB of 2002 was filed by the respondent. The fact that during the pendency of the appeal, the accused-respondent was on parole goes to show that initially, the accused-respondent was not given the benefit of suspension of execution of the sentence. *The mere fact that during the period of parole, the accused has not misused the liberties does not per se warrant suspension of execution of the*

sentence and grant of bail. What was really necessary to be considered by the High Court was whether reasons existed to suspend the execution of the sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.” (Emphasis supplied)

9. It was submitted that the learned Trial Court had sentenced the accused to undergo a fixed term sentence, and such a sentence should be suspended as a matter of right. This submission is not acceptable. This Court dealt with a similar argument in *CrMP no. 4659 of 2023 titled Raju vs State, decided on 27.06.2024* and held that the fixed term sentence up to three years can be suspended as a matter of right, but the accused has to show a fair chance of acquittal for serious offences. It was observed:

“13. Therefore, in the case of a short-term sentence of three years provided in the statute, bail is the rule and jail is the exception. However, in serious offences, the Court has to consider the circumstances of the case and the likelihood of early disposal of the case. Where the case is not taken up expeditiously and the person has spent more than half of the sentence, the person is entitled to be released on bail.”

10. This order was assailed before the Hon’ble Supreme Court of India in *Special Leave to Appeal (Crl.) No.10110/2024 titled Raju vs State decided on 05.08.2024*. The Hon’ble Supreme Court was not inclined to admit the SLP, and it was dismissed as withdrawn. It was observed:

“1. After arguing the case for some time and on our expressing reservations in entertaining the Special Leave Petition, learned counsel appearing for the

petitioner seeks permission to withdraw the said Petition.

2. The permission as sought is granted.

3. The Special Leave Petition is, accordingly, dismissed as withdrawn.”

11. It was held in *Omprakash Sahni v. Jai Shankar Chaudhary*, (2023) 6 SCC 123: 2023 SCC OnLine SC 551 that the Court should consider the gravity of the offence while considering an application for bail under Section 389 of Cr. P.C. It was observed:

“21. Suspension conveys postponement or temporarily prevents a state of affairs from continuing. According to *Black's Law Dictionary* (Seventh Edition), the word “suspend” means, inter alia, to interrupt; postpone; or defer. *Black's Law Dictionary* (Seventh Edition) describes the word “suspension” to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word “suspend” as pointed out above, the *New Oxford Dictionary of English* (1998 Edition) describes suspending as temporarily preventing from continuing or being enforced or given effect or deferring or delay an action, event or judgment.

22. Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail; hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders.

23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is found guilty, the presumption of innocence is erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From a perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.”

12. It was further held that while deciding the application for suspension of the sentence, the Court should consider whether the applicant has a fair chance of acquittal. It was observed:

33. Bearing in mind the aforementioned principles of law, the endeavour on the part of the court, therefore, should be to see 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 a fair chance 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, based on 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.”

13. A similar view was taken in *Jamnallal v. State of Rajasthan*, 2025 SCC OnLine SC 1641, wherein it was observed:

“10. One would have expected the High Court hearing an application under Section 389 of the Cr. P.C. for suspension of sentence to examine whether, *prima facie*, there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction.

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12. Taking into account the fact that the High Court has not adverted to any of the relevant factors for considering the case for suspension under Section 389 and keeping in mind the antecedents, we are of the opinion that the High Court was not justified in suspending the sentence.”

14. This position was reiterated in *Dashrath Singh v. State of M.P.*, 2025 SCC OnLine SC 1967, wherein it was observed:

“It would be proper and appropriate for the High Courts to be mindful of the law laid down in this context by this Court in its decisions, such as “*Angana v. State of Rajasthan* (2009) 3 SCC 767” and the more recent “*Omprakash Sahniv. Jai Shankar Chaudhary, etc.* (2023) 6 SCC 123” (particularly, paragraph 33 thereof).

15. It was held in *(NCT of Delhi) v. Lokesh Chadha*, (2021) 5 SCC 724; (2021) 2 SCC (Cri) 704; 2021 SCC OnLine SC 178, that while granting bail under Section 439 Cr.P.C., the Courts are liberal and apply the principle that bail is a rule and jail is an exception; however, in case of post-conviction

bail, there is a finding of guilt and the question of presumption of innocence does not arise. It was observed:

“10. At this stage, we will refer to the decision of a two-judge Bench of this Court in *Preet Pal Singh v. State of U.P.* [*Preet Pal Singh v. State of U.P.*, (2020) 8 SCC 645: (2020) 3 SCC (Cri) 897] where Indira Banerjee, J., speaking for the Court, observed as follows: (SCC p. 655, para 35)

“35. There is a difference between the grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC, and the grant of bail, post-conviction. In the earlier case there may be a 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, once there is a 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 the 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.”

16. This position was reiterated in *Shivani Tyagi v. State of U.P.*, 2024 SCC OnLine SC 842, wherein it was observed:

“7. Even on a cursory perusal, the High Court's order shows complete non-application of mind. Though a detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but an exhaustive exploration of the merits of the case is not necessary. The Court dealing with the bail application is required to exercise its discretion in a judicious manner and not as a matter of course.

8. There is a need to indicate in the order the reasons for prima facie concluding why bail was being granted, particularly where an accused was charged with having committed a serious offence. It is necessary for the Courts dealing with applications for bail to consider, among other circumstances, the following factors before granting bail, they are:

- 1. The nature of the accusation and the severity of punishment in case of conviction, and the nature of supporting evidence;*
- 2. Reasonable apprehension of tampering with the witness or apprehension of a threat to the complainant;*
- 3. Prima facie satisfaction of the Court in support of the charge.*

Any order dehors of such reasons suffers from non-application of mind, as was noted by this Court in Rama Govind Upadhyay. Sudarshan Singh (2002) 3 SCC 598, Puran v. Rambilas (2001) 6 SCC 33 and in Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528.”

17. It was further held that the suspension is to be granted by recording the reasons, and it is impermissible to release the accused simply because the appeal was not likely to be heard soon. It was observed:

“9. We have already referred to the mandate under Section 389Cr. P.C. that the order passed invoking the said provision should reflect the reason for concluding that the convicts are entitled to get their sentence suspended and consequential release on

bail. In the decision in *State of Haryana v. Hasmat* (2019) 5 SCC 373: 2019 INSC 377, this Court held that in an appeal against conviction involving a serious offence like murder punishable under Section 302, IPC, the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like the nature of the offence held to have been committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr. P.C. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389Cr. P.C. without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction (especially in cases where life imprisonment is imposed for serious offences), within a short span of time, may not be possible in view of the number of pending cases. In such circumstances, *if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. P.C., the likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention, as can be seen from the phraseology in Section 389Cr. P.C. Such an interpretation would also go against public interest and social security. In such cases, giving preference over appeals where the sentence is suspended, in the matter of hearing or adopting such other methods, making an early hearing possible could be resorted to.* We shall not be understood to have held that, irrespective of inordinate delay in consideration of the appeal and long incarceration undergone, the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its

own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.” (Emphasis supplied)

18. Therefore, the applicant can be released on bail if it is shown that he has a fair chance of acquittal.

19. As per the prosecution, the applicant drove his vehicle into a marriage ceremony and caused injuries to Jageer Singh, Sarabjeet Singh, Papinder Kaur, Paramjeet Kaur, Harjot Singh, Surjeet Kaur and Nand Kaur. He reversed his vehicle and caused injuries to Balpreet Singh, Gurjeet Singh, Savita Saini and Navneet Kaur. The accused fled away from the spot in the car whose wind glass was damaged by the impact.

20. Gurdeep Singh (PW1), Usha Rani (PW10), Savita Saini (PW11), Surjeet Kaur (PW15), Sarabjeet Singh (PW16), Papinder Kaur (PW17), Harjot Singh (PW18), Navneet Kaur (PW19), Gurdeep Singh (PW25) and Jageer Singh (PW26) did not support the prosecution's case.

21. Gurjeet Singh (PW8) admitted in his cross-examination that about 7-8 members of the accused family had also attended the marriage and were present during the Jago ceremony. Paramjeet Kaur (PW12) also stated in her cross-examination that family members of the accused had also attended the marriage. *Prima facie*, these admissions

make the prosecution's case suspect that the accused drove the vehicle into the crowd with the intent to kill the persons attending the marriage ceremony. There is a force in the submission of Mr Deepak Kaushal, learned Senior Counsel, that no reasonable person would cause harm to his family members.

22. It is admitted that the wind shield of the vehicle being driven by the applicant was damaged. Gurjeet Singh (PW8) admitted in his cross-examination that the wind shield of the vehicle was damaged. He volunteered to say that the damage was caused by striking the motorcycles. Jasvinder Singh (PW9) admitted in his cross-examination that the front windshield of the car was damaged, and the driver could not see anything because of the damaged windshield. The explanation furnished by Gurjeet Singh (PW8) that the damage was caused by hitting the motorcycle is not acceptable because the motorcycle would have hit the bumper of the vehicle, and not the windshield. The damaged windshield supports the version of the accused that he was attacked during the ceremony and had to flee from the spot to save his life. The admission that the driver could not see through the broken windshield would *prima facie* cast a doubt regarding the intent of the accused to kill the persons present in the ceremony.

23. It was admitted by Gurjeet Singh (PW8) that he had enmity with the accused because the accused had burnt the motorcycle of his (Gurjeet's) friend. Shyam Lal (PW13) admitted in his cross-examination that there was previous animosity between his son and the accused before the incident. A similar statement was made by Paramjeet Kaur (PW12). Thus, the relationship between the parties was strained, and the prosecution's evidence was required to be seen with due care and caution because of the enmity between the parties.

24. Therefore, it is *prima facie* doubtful that the accused had intended to murder the injured persons, and the applicant has a *prima facie* arguable case in his favour.

25. In view of the above, the application is allowed and the sentence imposed by learned Trial Court is ordered to be suspended during the pendency of the appeal subject to the deposit of fine, if not deposited earlier and furnishing of personal bond in the sum of ₹25,000/- with one surety in the like amount, undertaking to appear before this Court as and when directed to do so and surrender before the learned Trial Court in case of dismissal of the appeal.

26. The observations made hereinabove are regarding the disposal of the application and will have no bearing whatsoever on the case's merits.

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Records be called for. List for hearing in due
course.

(Rakesh Kainthla)
Judge

25th November 2025
(Chander)