

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.174 of 2020
With
I.A. No.457 of 2026

1. Nityanand Tiwary @ Nityanand Tiwari aged about 32 years S/O Shankar Tiwary
2. Rohit Tiwary @ Rohit Kr. Tiwari age about 27 years S/O Shankar Tiwary
3. Shankar Tiwary aged about 65 years S/O Jyotish Tiwary
4. Chameli Devi age about 63 years W/O Shankar Tiwary
All R/O Village-Telaydih, P.O-Chatro, P.S-Deori, District-Giridih.

			Appellants
	Versus		
State of Jharkhand			Respondent

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For Appellant No.1 : Mr. Rahul Pandey, Advocate
For the State : Mrs. Priya Shrestha, Spl. P.P.

Order No.16/Dated: 21st April, 2026

I.A. No.457 of 2026

Prayer

1. The instant interlocutory application has been filed on behalf of appellant no.1, namely, Nityanand Tiwary @ Nityanand Tiwari, under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, for suspension of sentence dated 27.01.2020 passed by the learned District & Additional Sessions Judge-II, Giridih, in connection with S.T. Case No.211 of 2013, S.T. Case No.218 of 2013 and S.T. Case No.38 of 2016, arising out of Deori P.S. Case No.200 of 2012, whereby and whereunder, the appellant has been convicted for the offence under Sections 304B/34 of the IPC and Section 498A/34 of the IPC and sentenced him to

undergo R.I. for life along with fine of Rs.25,000/- for the offence under Section 304B/34 of the IPC and in default of payment of fine, he has further been directed to undergo S.I. for one years. He has further been directed to undergo R.I. for three years along with fine of Rs.5,000/- for the offence under Section 498A/34 of the IPC and in default of payment of fine, he has further been directed to undergo S.I. for six months. All the sentences have been directed to concurrently.

Factual Matrix

2. The case of the prosecution in brief, is that the informant had solemnized marriage of his daughter Soni Devi with Nityanand Tiwary in the year 2008 and after that she went to her in-laws' house where she lived one year happily and peacefully but after that, his son-in-law and Samadhi started to demand a motorcycle and cash Rs. 50,000/- and they also started to assault and torture his daughter with other accused persons. The informant paid Rs.50,000/-to Nityanand Tiwary even then they again started to assault and torture his daughter due to non-fulfillment of demand of motorcycle and also threatened to solemnize remarriage of Nityanand Tiwary as she is unable to give birth of a child. On 29.12.2012 at about 8:00 P. M. one person of village Tilaidih informed him that the accused persons have committed murder of his daughter Soni Devi. After that the informant along with his family members and

relatives went to the in-laws' house of his daughter at village Tilaidih and saw that dead body of his daughter was lying on a cot in her courtyard and no family member of her in-laws' house was present there. He also learnt that the accused persons have killed his daughter after assaulting her and pressing her neck, nose and mouth due to demand of dowry. There were also visible injuries on the person of the deceased near her ear, arms of both hands, elbow and back portion. After that, police came and recorded his fardbeyan.

3. On the basis of fardbeyan of the informant, a case under Section 498(A), 304(B)/34 of IPC along with 3/4 D.P. Act has been registered against accused persons, vide Deori P. S. Case no. 200/2012 dated 30.12.2012 and investigation was taken up.
4. After completion of investigation, three separate charge sheets were submitted against the accused persons and accordingly, cognizance of the offence has been taken against the accused persons. Since the offence punishable u/s 304(B) IPC is exclusively triable by the court of Sessions then the case was committed to the court of Sessions.
5. The charges under Sections 304(B)/34 and 498(A)/34 of IPC were framed against the accused persons to which they have pleaded not guilty and claimed to be tried.

6. In order to substantiate the prosecution case, prosecution has examined altogether seven witnesses and the learned trial court after appreciation of evidence has found the charges levelled against the present applicant/appellant along with other accused persons have been proved beyond all reasonable doubts and accordingly, the present applicant/appellant has been convicted and sentenced as aforesaid.
7. The instant interlocutory application has been preferred by the applicant/appellant no.1, namely, Nityanand Tiwary @ Nityanand Tiwari with the prayer for suspension of sentence during pendency of the instant appeal.

Submission of the learned counsel for the appellant

8. It has been contended on behalf of the appellant that the learned trial court has miserably failed to take into consideration the entire facts and circumstances as there is no relevant material or corroborative piece of evidence.
9. It has also been contended that P.W.5, the Doctor in his cross-examination has admitted that he could not come to any conclusion regarding the cause of death.
10. It has been contended that during post-mortem, the viscera of the deceased was sent for chemical examination but the prosecution has not brought the viscera report on record.

11. It has further been submitted that there is no eye witness to the occurrence and as such, the same creates doubt in the entire prosecution case.
12. It has also been submitted that the appellant no.1 is in custody since 25.01.2020 and the co-accused persons, namely, Rohit Tiwary @ Rohit Kr. Tiwari, Shankar Tiwary and Chameli Devi have been directed to be released on bail by the Coordinate Bench of this Court vide orders dated 20.08.2020, 22.03.2022 and 06.07.2021 passed in I.A. Nos.3699 of 2020, 79 of 2022 and 2558 of 2021 respectively.
13. Learned counsel, based upon the aforesaid grounds, has submitted that it is a fit case for suspension of sentence during pendency of the appeal.

Submission of the learned Spl. P.P. for the respondent-State

14. While on the other hand, Mrs. Priya Shrestha, learned Spl. P.P. appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence.
15. It has been submitted that the prosecution witnesses have consistently supported the prosecution case.
16. It has been contended that during post-mortem, the Doctor, P.W.5, has found several ante-mortem injuries.
17. It has also been contended that there is sufficient evidence against the accused, being the husband (appellant no.1) and he was subjecting to cruelty upon the deceased due to non-

fulfillment of demand of dowry and ultimately, he killed her in furtherance of common intention.

18. Further, it has been contended that the prosecution has been able to bring home the charges under Section 498A/34 and Section 304B/34 of the IPC levelled against the appellant no.1 beyond the shadow of all reasonable doubts.
19. Learned State Counsel, based upon the aforesaid grounds, has submitted that there is material available on record, based upon which, the learned trial Court has found the charge proved beyond all reasonable doubts and hence, it is not a fit case for suspension of sentence during pendency of the instant appeal.

Analysis

20. We have heard the learned counsel for the parties and gone across the finding recorded by the learned trial court in the impugned judgment, as also, the testimony of the witnesses along with other exhibits, as available in the Trial Court Records.
21. It needs to refer herein that earlier three times, the prayer for suspension of sentence of appellant no.1, vide interlocutory application being I.A. Nos.7261 of 2022, 2916 of 2023 & 870 of 2025 was made but the said applications were dismissed as not pressed, vide orders dated 29.08.2022, 17.01.2024 and 07.04.2025 respectively, for ready reference, the said orders

are being quoted as under:-

"I.A. No.7261 of 2022

11/29.08.2022 Mr. Arwind Kumar, learned counsel appearing for the appellant no.1 does not press this interlocutory application.

Accordingly, I.A. No.7261 of 2022 stands dismissed as not pressed."

"Order No.12/Dated: 17.01.2024

I.A. No.2916 of 2023

After some arguments, Mr. Arwind Kumar, learned counsel appearing on behalf of the appellant No.1 does not want to press this interlocutory application.

Accordingly, I.A. No.2916 of 2023 stands dismissed as not pressed at this stage."

"14/Dated: 7th April, 2025

I.A. No.870 of 2025:

1. After some argument, learned counsel for the appellant intends not to press the instant interlocutory application.

2. Such submission has been made in presence of learned Special Public Prosecutor appearing for the respondent-State."

3. Considering the submission, the instant interlocutory application is dismissed as not pressed."

22. The appellant no.1 has again tried to make out a case by questioning the impugned Judgment for the purpose of making out a *prima facie* case for suspension of sentence.
23. Before entering into the issue that "whether the prayer of the applicant for suspension of sentence is fit to be allowed or not", it requires to refer herein the settled position of law.
24. The Hon'ble Apex Court in the case of **Preet Pal Singh vs. State of U.P., (2020) 8 SCC 645** has observed that there is difference between grant of bail in case of pre-trial arrest and

suspension of sentence, post-conviction.

- 25.** In the pre-trial arrest, 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, however, in case of postconviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. For ready reference the relevant paragraph of the aforesaid judgment is being quoted 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."

- 26.** Thus, it is evident from the aforesaid judgment that during consideration of suspension of sentence which is the post-conviction stage, the presumption of innocence in favour of the accused cannot be available and at this stage, the Court's only duty is to see that the prima-facie case is made out or not, as such, the detailed appreciation of evidence is not required at this stage. It has further been observed by the Hon'ble Apex Court that 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/430 BNSS.
- 27.** At this juncture, in view of contentions made by the learned counsel for the parties, it is pertinent to analyze the law on dowry death also. Section 304-B IPC, which defines and provides the punishment for dowry demand. It provides that "dowry death" is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Sub-clause (2) provides for punishment for those who cause dowry death.

- 28.** It needs to refer herein that the phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before”. It is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution.
- 29.** When the prosecution shows that “soon before her death such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry”, a presumption of causation arises against the accused under Section 113-B of the Evidence Act.
- 30.** It is evident from the aforesaid provision that the word “shall” has been stipulated therein which provides mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry and as such onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC,

the onus to prove shifts on the accused.

31. In the backdrop of the aforesaid settled proposition of law, this Court is now adverting to the factual aspect of the case as well as the contention of the learned counsel for the appellant in order to find out that “whether the prayer of the applicant/appellant for suspension of sentence is fit to be allowed or not.”
32. From perusal of the record, it is evident that the informant, who is the father of the deceased, along with other witnesses, has clearly stated in their evidence that the marriage of the deceased, Soni Devi, was solemnized in the year 2008 with Nityanand Tiwary (applicant/appellant no.1), and that she died in her matrimonial home on 29.12.2012, within seven years of her marriage.
33. Further, P.W.7, the informant, has clearly stated in his evidence that he had given cash of Rs. 2,00,000/- along with other articles at the time of his daughter’s marriage, and there were dues of Rs. 50,000/- and a motorcycle, which were being demanded by her son-in-law, Nityanand Tiwary (applicant/appellant no.1). He has further deposed that although, his daughter lived happily in her matrimonial home for about two years after marriage, thereafter, her husband Nityanand Tiwary (applicant/appellant no.1) began to assault her on account of non-fulfilment of the aforesaid demand and

ultimately, killed her within four years of marriage due to such non-fulfilment. He has also stated that his daughter had disclosed to him about the demand of due money and motorcycle, and that, she was assaulted by the accused persons about twenty days prior to the occurrence. On visiting her matrimonial home at that time, his daughter had cautioned him that unless the demand was fulfilled, the accused persons would kill her.

34. The other witnesses have also supported the allegation of illegal demand in their evidence, and they have further stated that they had seen injuries on the person of the deceased. An Inquest Report was prepared, wherein it is clearly mentioned in paragraph 5 that injuries were present near the right ear, on the back portion, right arm and elbow, and on the left hand, and that froth was found coming from her nose. The doctor, in the post-mortem examination, confirmed the presence of these injuries, which corroborates that the deceased had been subjected to cruelty soon before her death on account of non-fulfilment of the illegal demand of dowry.
35. Thus, from the aforesaid evidence, *prima facie*, it is evident that the deceased, Soni Devi, suffered an unnatural death in her matrimonial home within seven years of her marriage, and she had been subjected to cruelty soon before her death on account of non-fulfilment of the demand for dowry.

36. Thus, from the aforesaid, it is evident that there was proximity between effect of cruelty based on dowry demand and the consequential death of the deceased, as such, *prima facie*, the prosecution has proved the pre-requisites of section 304-B of the I.P.C., against the applicant/appellant no.1.

Issue of parity

37. The learned counsel has raised the issue of parity and contended that since the other accused persons have been granted bail, therefore, present applicant/appellant no.1 is also eligible for suspension of sentence during pendency of the instant appeal.
38. There is no dispute that in the matter of suspension of sentence or in the matter of bail, the principle of parity is to be followed. But while following the principle of parity, the revolving circumstances regarding the culpability is to be considered by the Court. Parity does not mean that if the co-accused or co-convict has been allowed to be released on bail there merely on the principle of parity, the same relief is to be granted rather the culpability of the particular accused persons is to be assessed before applying the principle of parity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486.***

39. It is further settled connotation of law that Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230.***
40. Thus, while dealing with the prayer for suspension of sentence of one or the other accused person, the culpability alleged against one or the other accused person is to be taken into consideration. Further, parity cannot be the sole ground for allowing prayer for suspension of sentence, rather, the Court is to satisfy itself that there are sufficient grounds for releasing the applicant on bail.
41. This Court, applying the aforesaid principle of parity as has been deliberated upon by the Hon'ble Apex Court, is proceeding to consider the issue of parity.
42. It has been contended herein that other co-accused persons, namely, Rohit Tiwary @ Rohit Kr. Tiwari, Shankar Tiwary and Chameli Devi have been directed to be released on bail by the Co-ordinate Bench of this Court vide orders dated 20.08.2020, 22.03.2022 and 06.07.2021 passed in I.A. Nos.3699 of 2020,

79 of 2022 and 2558 of 2021 respectively, therefore, the appellant no.1 is also entitled for suspension of sentence during pendency of the instant appeal.

- 43.** This Court is of the view that the aforesaid contention of the learned counsel for appellant needs to be appreciated herein in the backdrop of the settled position of law on the issue of parity as discussed and referred in preceding paragraphs.
- 44.** From the testimony of P.W.7, the informant, it is evident that he has categorically stated about the culpability of the present applicant/appellant no.1. It has been testified that informant had given cash of Rs. 2,00,000/- along with other articles at the time of his daughter's marriage, and that there remained dues of Rs. 50,000/- and a motorcycle, which were being demanded by his son-in-law, Nityanand Tiwary (applicant/appellant no.1) and after two years of marriage, Nityanand Tiwary (applicant/appellant no.1) began to assault his daughter on account of non-fulfilment of the aforesaid demand, and ultimately, killed his daughter within four years of marriage due to such non-fulfilment.
- 45.** This Court, therefore, is of the view that the specific attributability has been casted upon the present appellant by the informant.
- 46.** This Court, therefore, is of the view that the case of the present appellant is not coming in the fold of the principle of parity and

the element of demand of dowry has also been found to be substantiated by the testimony of P.W.7, the informant, the father of the deceased.

47. Thus, this Court, after having discussed the factual and legal issues, is of the view that herein, the benefit of parity cannot be extended in favour of the present applicant/appellant no.1.
48. Further, the ground of custody has also been taken that as the appellant has undergone the sentence of about 6 years against the sentence of life imprisonment.
49. There is no dispute that the custody is also taken into consideration for the purpose of suspension of sentence but it is the settled position of law that the period of custody cannot be the sole ground for suspension of sentence, rather, the nature of crime as has been found to be proved against one or the other, the appellant herein, is to be taken into consideration and further, the period of custody cannot also be a ground for suspension of sentence if the nature of offence having been proved in course of trial is serious.
50. Recently, the Hon'ble Apex Court in the case of ***Chhotelal Yadav versus state of Jharkhand & Anr. [CRIMINAL APPEAL NO.4804/2025 @ Special Leave Petition (Crl.) No.15688/2025]*** has observed that while considering the plea for suspension of sentence of life imprisonment is that the convict should be in a position to point out something very

palpable or a very gross error in the judgment of the Trial Court on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed and he be acquitted.

51. Recently, the Hon'ble Apex Court in the case of ***Lal Muni Devi Vs. State of Bihar & Anr Criminal Appeal No.1626/2026***, has set aside the bail granted to a man accused in a dowry death case, observing that courts must exercise greater caution in such serious offences. The bench emphasized that a casual or mechanical approach in granting bail can undermine public confidence in the justice system. It has further been observed that Dowry deaths are indeed a profound disgrace and a major social evil representing a severe violation of human rights and dignity, for ready reference the relevant paragraphs of the aforesaid judgment are being quoted as under:

"12. Dowry deaths are indeed a profound disgrace and a major social evil representing a severe violation of human rights and dignity.----

14. In a very recent pronouncement by this Court, a deep concern was expressed over the seemingly mechanical approach being adopted by the High Courts in granting bail in cases of dowry deaths.—

15. Dowry deaths are indeed a profound disgrace and a major social evil representing a severe violation of human rights and dignity. Despite the legal prohibitions, this practice continues to result in the unnatural deaths of thousands of women, often through murder or driven to suicide because of greed-driven demands for money or valuables from the groom's family. Dowry deaths are a

severe blot on society.”

52. In the instant case, the nature of offence alleged to be committed by the appellant is of dowry death of his wife which has been proved during trial as per the testimony of the P.W.7 informant.
53. This Court, considering the aforesaid fact and also taking into consideration the aforesaid settled proposition of law, is of the view that it is not a case where the sentence is to be suspended solely on the ground that the appellant is in custody for six years against the sentence of life imprisonment.
54. This Court, on the basis of discussion made hereinabove and particularly taking into consideration the testimony of P.W.-7, as also taking into consideration the ratio of the judgment rendered by the Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P (supra) and Chhotelal Yadav (supra)*** *prima-facie*, is of the view that the present interlocutory application is not fit to be allowed.
55. Accordingly, the interlocutory application being I.A. No.457 of 2026, is hereby, rejected.
56. Before parting with the matter, we may clarify that we may not be understood to have expressed any opinion on merits of the matter one way or the other and all the observations made by this Court hereinabove should be taken as confined to dealing with the prayer of the applicant/appellant for suspension of

sentence during pendency of the instant appeal. As and when the main matter i.e., criminal appeal, will come up for hearing, it will be decided on its own merits without being inhibited or influenced by the observations in this order.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

21/04/2026

Rohit/-**A.F.R.**