

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No.298 of 2019

1. Ram Singh Banara, aged about 47 years S/O Triban Banra
 2. Mangu Banara, aged about 47 years S/o Porma Banara
- Both are R/O-Forest Block Tola Dalmabera, P.S.+P.O.-Jadugora
Dist.-East Singhbhum **Appellants**

Versus

The State of Jharkhand **Respondent**

**CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For Appellant No.2 : Mr. Shiv Prasad Singh, Advocate
For the State : Mr. Azeemuddin, A.P.P.

05/Dated: 29.01.2026

I.A. No.17207 of 2025

1. The instant interlocutory application has been filed on behalf of appellant no.2, namely, Mangu Banara under Section 430(1) of the B.N.S.S., 2023 for suspension of sentence dated 08.02.2019 passed by the learned Addl. Sessions Judge-I, Ghatsila, in connection with Jadugora P.S. Case No.49 of 2016 corresponding to G.R. Case No.475 of 2016, whereby and whereunder, the appellant has been convicted for the offence under Section 302 read with Section 34 of the IPC and sentenced to undergo R.I. for life along with fine of Rs.10,000/-. He has further been sentenced to undergo R.I. for two years for the offence under Section 324 read with Section 34 IPC and in default of payment of fine, he has further been directed to undergo S.I. for three months.
2. It has been contended on behalf of appellant no.2 that although, the prayer for suspension of sentence of the present appellant has been rejected, by this Court vide order dated 20.03.2024

passed in I.A. No.2679 of 2024 but the prayer has been renewed on the ground that the appellant no.2 has undergone the sentence of nine years against the maximum sentence of life and co-convict, namely, Ram Singh Banara has been directed to be released on bail after suspension of sentence by the Coordinate Bench of this Court, vide order dated 28.08.2024 passed in I.A. No.7439 of 2024.

3. Learned A.P.P. appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence.
4. It has been contended by him that the prayer for suspension of sentence has already been dealt with by this Court and on consideration of testimony of P.W.7, the eye witness, the said prayer has been rejected, vide order dated 20.03.2024 passed in I.A. No.2679 of 2024.
5. It has been contended that so far as the prayer for suspension of sentence on the ground of parity is also not applicable if the order passed by the Coordinate Bench of this Court vide order dated 28.08.2024 passed in I.A. No.7439 of 2024 will be taken into consideration, wherein, the Coordinate Bench has made an observation that the case of the present appellant is distinguishable to that of the case of the appellant no.1, Ram Singh Banara, since, the specific attributability has been casted upon the present appellant by P.W.7, the eye witness, of giving fatal blow over the head of the deceased.
6. It has also been contended that merely on the ground of period of

custody of nine years, the sentence is not fit to be suspended.

7. We have heard the learned counsel for the parties and gone through the findings recorded by the learned trial court in the impugned judgment, as also, the order passed by this Court, vide order dated 20.03.2024 passed in I.A. No.2679 of 2024, wherein, while considering the prayer for suspension of sentence, this Court has taken note of testimony of P.W.7, the eye witness, who remained consistent in the cross-examination also, has rejected the prayer for suspension of sentence.
8. It is the admitted case that the order passed by this Court on 20.03.2024 in I.A. No.2679 of 2024 has not been challenged before the Higher Forum.
9. Since, we have already taken a view on the issue on merit by taking into consideration the testimony of P.W.7, eye witness and as such, it will not be just and proper to again consider the issue on merit. However, in addition thereto, further grounds have been taken, i.e., the parity and the period of custody.
10. So far as the issue of parity is concerned, the ground has been made out for the purpose of taking aid of release of Ram Singh Banara, the co-convict, whose sentence has been suspended by the order passed by the Coordinate Bench of this Court, vide order dated 28.08.2024 in I.A. No.7439 of 2024, therefore, we thought it proper to go through the order dated 28.08.2024 passed in I.A. No.7439 of 2024 by the Coordinate Bench, which is being quoted as under:-

"08/28.08.2024:

I.A. No.7439 of 2024

This interlocutory application has been filed by the appellant No.1, praying therein to suspend the sentence and release him on bail during the pendency of this appeal.

2. The appellant has been convicted for the offence under Sections 302, 324 read with 34 of IPC in connection with Sessions Trial No.164 of 2017. He has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/- for the offence under Sections 302 read with Section 34 of IPC along with other sentences.

3. Heard, learned counsel for the appellant and learned A.P.P. for the State and have gone through the impugned judgment, the evidence and the Trial Court Records.

4. Opportunity was given to the State to oppose the bail, which the State availed and opposed.

5. Appellant has remained in custody from 31.12.2016. From the statement of the eye witness, P.W.-7 it is clear that this appellant has not given any fatal blow on the head of the deceased. Thus, this case can be distinguished from the case of the co-appellant, whose bail has been rejected.

6. Considering the statement of P.W.7 and the fact this appellant has not given any fatal blow and was not armed with the murder weapon, we are inclined to allow this Interlocutory application. Accordingly, upon suspending the sentence, the appellant No.1, namely, Ram Singh Banara is directed to be released on bail during the pendency of this appeal, on furnishing bail bonds of Rs.10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-I, Ghatsila in connection with Session Trial No.164 of 2017 with a condition that the appellant No.1 shall appear and mark his attendance before the Registrar, Civil Court, Ghatsila, once in every four months till the disposal of this appeal.

7. Accordingly, I.A. No.7439 of 2024 stands allowed."

11. It is evident from the said order, particularly, paragraph-5

thereof that the Coordinate Bench has taken into consideration

the period of custody, as also, the testimony of P.W.7, eye witness, wherein, no attributability has been casted upon the appellant no.1, namely, Ram Singh Banara, said to be giving any fatal blow over the head of the deceased.

- 12.** It has also been observed that the case of Ram Singh Banara, appellant no.1 is distinguishable from the case of the present appellant, whose appeal has already been rejected by this Court, vide order dated 20.03.2024 passed in I.A. No.2679 of 2024, for ready reference, the said order dated 20.03.2024 is being quoted as under:-

“Order No.05/ Dated: 20.03.2024
I.A. No. 2679 of 2024

The instant interlocutory application has been filed under Section 389 (1) of the Code of Criminal Procedure, 1973 on behalf of the appellant Mangu Banra who is appellant No.2 prays for the suspension of sentence and to release him on bail during the pendency of the instant criminal appeal, whereby and whereunder he has been convicted and sentenced under Section 302 read with section 34 and Section 324 r/w 34 of the Indian Penal Code.

2. It has been contended on behalf of the appellants in the instant case where the prosecution has failed to substantiate to prove all shadow of reasonable doubt. It has been contended that there is wide contradictions in the testimony of the witnesses.

Further, ground has been taken that even the weapon which has been used in commission of crime i.e. Kattari having the blood stain has not been sent for forensic test before the Forensic Science Laboratory. Hence, it cannot be said that the prosecution has been able to prove the said charges beyond all shadow of reasonable doubt. The submission has also been made that merely on the basis of the testimony of P.W. 7 which has not been corroborated by the other testimony.

Hence, it is a fit case where the sentence is fit to be suspended.

3. While on the other hand Mr. Azeemuddin, learned APP appearing for the State has opposed the prayer for bail. The ground has been taken that it is incorrect on the part of the appellant that the prosecution has failed to substantiate the charge. It appears that P.W. 7 who happens to be wife of the deceased was in the house and she had witness the commission of crime while committing murder by these two appellants, one of the appellant-Mangu Banara, is her own relative.

4. It has been contended that it is a case of prosecution that is based upon the testimony of the eye witness and it is a settled proposition of law that if the conviction is based upon the testimony of eye witness, even if the weapon has not been sent for the forensic examination that will not be fatal to the prosecution. 5. The learned APP appearing for the State based upon the aforesaid ground has submitted that it is not a case where the sentence is fit to be suspended.

6. This Court heard learned counsel for the parties, gone across the finding given by the learned trial court in the impugned judgment, the testimony available in the trial court record along with the other documents.

7. This Court after appreciating the rival submissions has gone through the testimony of P.W. 7 where it is evident that P.W. 7 has consistently supported the prosecution version of commission of murder of her husband while she was inside the house and in front of her, both these appellants have assaulted and killed her husband.

8. This Court is of the view that since the judgment is based upon the testimony of P.W.7 and she remained consistent even in the cross examination, hence, this Court is of the view that this is not a case for suspension of sentence.

9. Accordingly, the instant interlocutory application stands dismissed.”

- 13.** The Coordinate Bench has further considered the testimony of P.W.7 to the effect that no such attributability has been casted upon Ram Singh Banara, the appellant no.1 in giving the fatal

blow over the head of the deceased and even has not been referred by the P.W.7 that the Ram Singh Banara, appellant no.1, was armed with the murder weapon.

14. The case of the present appellant is distinguishable, which would be evident from the testimony of P.W.7, wherein, specific attributability has been casted upon the present appellant of giving fatal blow over the head sustaining serious injury succumbed into death. Therefore, the testimony of P.W.7, clarifies the position of specific attributability in commission of murder of the deceased by the present appellant.

15. The law is well settled so far as the issue to be considered for the purpose of applying the principle of parity that while applying the principle of parity, all surrounding facts are to be taken into consideration, reference in this regard may 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*** wherein, it has held as under:

“18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.”

16. The Hon'ble Apex Court has further observed in the aforesaid judgment, i.e., ***Tarun Kumar vs. Assistant Director Directorate of Enforcement (supra)*** that it is axiomatic that the principle of

parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.

17. It is further settled connotation of law that Court cannot exercise its power 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***, wherein, it has been held as under:

“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious

manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [Pravinbhai Hirabhai Koli v. State of Gujarat, 2020 SCC OnLine Guj 2986] , [Khetabhai Parbatbhai Makwana v. State of Gujarat, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhraisinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [Siddhraisinh Bhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

18. Recently, the Hon’ble Apex Court in the case of **Sagar Vs.**

State of UP & Anr., 2025 INSC 1370 has categorically observed that while utilizing parity as a ground for bail, the same must focus on the role of the accused and cannot be utilized solely because

another accused person was granted bail in connection with the same offence, and neither can this ground be claimed as a matter of right, the relevant paragraphs are being quoted as under:

“12. The High Court appears, plainly, to have erroneously granted bail to the accused-respondent on the sole ground of parity which it has misunderstood as a tool of direct application as opposed to parity being focused on the role played by the accused and not the thread of the same offence being the only common factor between the accused persons. On this count alone we can set aside the impugned judgment and order. However, we propose not to do so and proceed to delve further.

14. What flows from the above judgments, which have been referred to, only to the limited extent indicated above, is that the High Courts speak in one voice that parity is not the sole ground on which bail can be granted. That, undoubtedly, is the correct position in law. The word ‘parity’ is defined by the Cambridge Dictionary as “equality, especially of pay or position.” When weighing an application on parity, it is ‘position’ that is the clincher. The requirement of ‘position’ is not met only by involvement in the same offence. Position means what the person whose application is being weighed, his position in crime, i.e., his role etc. There can be different roles played - someone part of a large group, intending to intimidate; an instigator of violence; someone who throws hands at the other side, instigated by such words spoken by another, someone who fired a weapon or swung a machete - parity of these people will be with those who have performed similar acts, and not with someone who was part of the group to intimidate the other by the sheer size of the gathering, with another who attempted to hack away at the opposer’s limbs with a weapon.”

19. This Court, after going through the testimony of P.W.7, is of the view that the attributability is quite distinguishable so far as the present appellant and appellant no.1, namely, Ram Singh Banara of the present appeal is concerned and by taking the aforesaid ground, we have already rejected the prayer for suspension of sentence of the present appellant.

20. So far as the ground of custody as has been made of about 9 years that merely on the ground of custody, the sentence is not to

be suspended, rather, the sentence can be a ground coupled with the attributability as has been found and substantiated in course of trial.

21. 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 even if the convict has completed substantive sentence, that cannot be a sole ground for suspension of sentence if the nature of offence having been proved in course of trial is serious.

22. Further, it needs to refer herein that recently, the Hon'ble Apex Court in the case of ***Chhotelal Yadav versus State of Jharkhand & Anr. (Criminal Appeal no.4804/2025)*** has specifically 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.

23. Thus, it is settled connotation of law that even if the convict has completed substantive sentence, that cannot be a sole ground for suspension of sentence if the nature of offence having been proved in course of trial is serious.

24. Herein, it is the specific attributability against the present appellant as would be evident from testimony of P.W.7 having

been corroborated by the witnesses, this Court, therefore, is of the view that merely on the ground of sentence having been undergone by the present appellant of nine years, cannot be a sole ground for suspending the sentence leaving aside the attributability found to be substantiated in course of trial.

25. Therefore, on the basis of discussion made hereinabove, this Court is of the view that it is not a fit case for suspension of sentence of the present appellant.

26. Accordingly, I.A. No.17207 of 2025 stands dismissed.

27. It is made clear that any observation made herein will not prejudice the issue on merit as the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai J.)

29.01.2026
Rohit/-