

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 310 of 2022

Rabindra Sen @ Arbinda Sen		Appellant
Versus		
The State of Jharkhand		Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant	: Mr. Amit Kumar Das, Advocate
For the State	: Mrs. Kumari Rashmi, A.P.P

5/Dated: 27th February, 2023

Per: Sujit Narayan Prasad, J.

I.A. No.1903 of 2023

This interlocutory application has been filed under section 389(1) of the Cr. P.C for suspension of sentence passed in consequence of the judgment of conviction dated 23.12.2021 in Sessions Trial No.36 of 2019 by learned Additional Sessions Judge-I, at Ghatsila, Singhbhum East, whereby and whereunder the appellant has been convicted under Section 302/34 of the Indian Penal Code and directed to undergo rigorous imprisonment for life along with fine of Rs.20,000/-.

The ground has been taken that the trial court while convicting the appellant has committed gross illegality by not appreciating the testimony of the prosecution witnesses and merely on the basis of the dying declaration of the deceased the conviction is based and as such the *prima facie* case is available for suspending the sentence.

Mrs. Kumari Rashmi, learned A.P.P has submitted while opposing the instant interlocutory application that it is incorrect on the part of the appellant to take the ground that merely on the basis of the dying declaration of the deceased the conviction is based, rather, the dying declaration is corroborated by P.W-6, namely, Laljee Hembrom as also the same finds corroboration from the testimony of the doctor and therefore, no

prima facie case is available at this stage for exercising the power conferred to this Court under Section 389(1) of the Cr.P.C.

We have heard learned counsel for the parties and perused the finding recorded by the learned trial court.

Before entering into the ground as has been agitated in the instant interlocutory application for suspending the sentence, the reference of the judgment of the Hon'ble Apex Court rendered in the case of ***Kishori Lal v. Rupa and Ors.***, reported in **(2004) 7 SCC 638** is required to be made, wherein at paragraph 4, 5 and 6 it has been held, which reads as under:

“4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

Further the Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P.*** reported in **(2020) 8 SCC 645** has held at paragraph 27, 32 and 36 which reads as under:

“27. Section 304-B was incorporated in the Penal Code by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). The object of the amendment was to curb dowry death. Section 304-B does not categorise death, it covers every kind of death that occurs otherwise than in normal circumstances. Where the other ingredients of Section 304-B of the Code are satisfied, the deeming fiction of Section 304-B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride.

32. In Mauji Ram v. State of U.P. [Mauji Ram v. State of U.P., (2019) 8 SCC 17 : (2019) 3 SCC (Cri) 265] , this Court referred to Ajay Kumar Sharma v. State of U.P. [Ajay Kumar Sharma v. State of U.P., (2005) 7 SCC 507 : 2005 SCC (Cri) 1702] , Lokesh Singh v. State of U.P. [Lokesh Singh v. State of U.P., (2008) 16 SCC 753 : (2010) 4 SCC (Cri) 418] and Dataram Singh v. State of U.P. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] and stated categorically that this Court had time and again emphasised the need for assigning reasons while granting bail.

36. In Vinod Singh Negi v. State of U.P. [Vinod Singh Negi v. State of U.P., (2019) 8 SCC 13 : (2019) 3 SCC (Cri) 262] , this Court set aside the impugned order [Umesh Sharma v. State of U.P., 2018 SCC OnLine All 5338] of suspension of sentence and grant of appeal as the order was devoid of reasons.”

In view of the mandate of Section 389(1) of the Cr. P. C., the principle are different in the case of sentences not exceeding three years as well as in the bailable offence. Also the cases where the person is convicted of offences punishable with death or imprisonment for life or imprisonment for a term not less than ten years, an opportunity to be given to the public prosecutor under proviso to Section 389(1) of the Cr.P.C.

It is, thus, evident, that the reasons have to be germane to justify the grounds of death. The mere fact that during the trial the accused were granted bail and there was no allegation of misuse of privilege of bail, is not of much significance, as the accused had been found guilty on conviction.

The mere fact that during trial liberty of bail was not misused may not per se warrant suspension of sentence on grant of bail. However, if the convict has undergone more than half of the sentence in case of fixed term sentence and disposal of appeal is likely to take some time, the matter needs to be seen in the light of observation made by the Hon'ble Apex Court in the case of ***Sonadhar vs. The State of Chhattisgar (S.L.P (Cr.) No.529 of 2021***, wherein, it has been held, "The Delhi High Court Legal Services Committee would take up cases for those convicts who have undergone more than half the sentence in case of fixed such sentences and examine the flexibility of filing the bail application before the High Court.

Reverting back to the facts of the present case, the deceased has been burn to death. The learned trial court has duly dealt with the detailed convention raised on behalf of the accused and reached the conclusion on the basis of the dying declaration of the deceased made before the P.W-6, namely, Laljee Hembrom, Assistant Sub-Inspector of Police in whose presence, the aforesaid dying declaration was recorded by Ananto Sen (deceased).

It appears from the discussion made by the learned trial court in the judgment of conviction that the investigating officer has found the declaration so given by the deceased at the time of death since he has visited the place of occurrence and found cot (*Khatia*) and a white plastic gallon of ten litre. Further it appears from the materials available on record that even the investigating officer has not found any inconsistency in the prosecution version.

The position of law is well settled as would be evident from the judgment referred hereinabove that the Appellate Court, at the stage of suspension of sentence and release on bail till disposal of appeal, has to

examine a case in patent infirmity in the order of conviction that renders the conviction *prima facie* erroneous. The evidence is not to be reassessed or to reanalyze to suspend the execution of the sentence. The detailed observation on merit of the case are called for, at this stage, lest it prejudices the case of the petitioner but the matter has been set in the light of the principles of law.

Having regard to the evidence on record and detailed reasons recorded by the learned trial court, this Court is of the considered opinion that no ground for suspension of sentence till disposal of the appeal was made out in the present case.

The instant interlocutory application is accordingly, dismissed.

The observation herein has been made *prima facie* only for the purpose of consideration of suspension of sentence.

Let a copy of this order be forwarded to the appellant through Jail Superintendent.

The appeal will be listed in due course.

(Sujit Narayan Prasad, J.)

(Subhash Chand, J.)