

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.557 of 2023

Aakash Kumar @ Aakash Bhardwaj, aged about 28 years, s/o Jagdish
Bhardwaj, r/o village-Aasani Khurd, PO-Chatra, PS-Sadar, District-
Chatra **Appellant**

Versus

The State of Jharkhand **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Nilesh Kumar, Advocate
For the Respondent : Mr. Pankaj Kumar Mishra, APP

11/ Dated 20th January, 2025

Per, Sujit Narayan Prasad, J.

I.A. No. 6608 of 2024

1. The instant interlocutory application has been filed under Section 430 of BNSS, 2023 for keeping the sentence in abeyance in connection with the judgment of conviction dated 02.03.2023 and order of sentence dated 03.03.2023 passed by the learned Additional Sessions Judge-III, Chatra in connection with Sessions Trial Case No.137 of 2021, whereby and whereunder, the appellant has been convicted under section 302/201/34 of the IPC and sentenced to undergo RI for life and a fine of Rs.10,000/- for the offence under section 302 of the IPC and in default of payment of fine further directed to undergo RI for six months. Further, the appellant has been sentenced to RI for 3 years under section 201 of the IPC and all the sentences will run concurrently.

Factual Matrix

2. The factual matrix of the case as per FIR is that the informant namely Vinay Pandey on 10.02.2021 at about 01.00 PM, he received information that his daughter Minakshi Devi, wife of Aakash Bhardwaj (applicant/appellant herein) was murdered and her dead body is found in

Mesoghao forest. After getting the said information, he went to the place of occurrence and he identified the dead body of his daughter. It has further been alleged that a dowry case has already been going on against his son-in-law. He stated that his son-in-law Aakash Bhardwaj called his daughter to Hazaribagh before five days ago and after returning from Hazaribagh on 09.02.2021 his son-in-law again called his daughter near D.C. Office, Chatra and his daughter went to meet him from her house but at the evening at about 06 to 07 PM, the informant tried to contact his daughter but her mobile phone was found switch off. It has been alleged that the in-laws of his daughter have murdered his daughter and the accused persons tried to disappear the evidence. Thereafter, the instant case was registered against six accused persons.

3. Accordingly, the police case has been registered bearing Gidhor P.S. Case No. 07 of 2021 dated 10.02.2021 against the present applicant/appellant and others on the basis of written-report of the informant.
4. In order to substantiate the prosecution case, prosecution has examined altogether twelve witnesses in Session Trial and the learned trial court after appreciation of evidence has found the charges levelled against the present applicant along with other accused proved beyond reasonable doubt and accordingly the present applicant has been convicted for the offence under Sections 302/201/34 of the IPC and sentenced as aforesaid.
5. The instant interlocutory application has been preferred by the applicant/appellant with the prayer for the suspension of sentence during pendency of the instant appeal.

Submission of the learned counsel for the applicant/appellant

6. It has been contended on behalf of the applicant that the applicant has been falsely implicated in the present case merely on the basis of suspicion as he is the husband of the deceased and there was some altercation between the applicant and the deceased.
7. It has been contended that initially the case has been registered against all the in-laws members of the deceased on the general and omnibus allegations and later on this applicant was taken into remand as per the statement recorded by the prosecution witnesses and after that his confessional statement was recorded on 06.03.2021 wherein he confessed his guilt.
8. It has further been submitted that there is no eye witness to the occurrence and, as such, the prosecution witnesses are not reliable as all are hearsay witnesses.
9. It has been contended that though the broken mobile and the vehicle used in the alleged crime were recovered during investigation but these are not belonging to the present applicant. It has further been contended that no incriminating article was recovered from the conscious possession of the present applicant.
10. It has further been contended that there is no CDR on record which shows that a conversation was made in between this applicant and the deceased before or at the time of alleged occurrence which creates serious doubt.
11. Learned Counsel, based upon the aforesaid grounds has submitted that it is a fit case for suspension of sentence during pendency of the instant appeal.

Submission of the learned APP for the State

12. While, on the other hand, Mr. Pankaj Kumar Mishra, learned APP appearing for the respondent-State of Jharkhand has vehemently opposed the prayer for suspension of sentence.
13. It has been contended by the learned APP by referring to the statement of Investigating Officer (PW12) who has deposed that on an information he recovered a dead body of a lady from the Meshaundhi forest and thereafter on identification of the informant that she was her daughter, on his fardbeyan a case was registered against the in-laws of the deceased.
14. During investigation Investigating Officer arrested the applicant and co-convict Lalit Kumar and on the identification of the present applicant he recovered the knife, gloves and rope used in the alleged crime near the place of occurrence and exhibited the same during course of trial. He also recovered a broken mobile belonging to the deceased on the confession of the applicant from a washing center at Ramgarh. The Investigating Officer has recovered the vehicle used in the crime from the house of a near relative of the applicant.
15. It has been contended that since the prosecution witnesses have fully supported the case and the materials exhibits are corroborated the same, as such, it is not a fit case where the applicant is to be released on bail by suspending his sentence.

Analysis

16. We have heard the learned counsel for the parties and gone across the findings recorded by the learned trial Court in the impugned judgment as

well as the testimony available in the lower Court records, as also the materials exhibit as available therein.

17. Before advertng to the facts of instant case this Court would like to referred the ratio as led by the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123*** wherein it has been held that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted, for ready reference the relevant paragraph of the aforesaid Judgment is being quoted as under:

31. In Vijay Kumar v. Narendra [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366 : 2003 SCC (Cri) 1197] , it was held by this Court that in cases involving conviction under Section 302IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] , it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to 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 fair chances 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, on the basis of 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.

18. Thus it is evident from the perusal of the relevant paragraphs of the aforesaid judgment it is apparent that while considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.
19. Further, it needs to refer herein that the appreciation of the evidence in entirety is not required at this stage, reason being that while exercising power of suspension of sentence during pendency of appeal the Court has to see only the prima-facie case.
20. 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. 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, 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. 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."

21. Thus, it is evident from the aforesaid judgment, that during considering 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.
22. In the backdrop of the aforesaid settled proposition of law this Court is now advertent to the fact of the instant case in order to ascertain that whether *prima facie* case for suspension of sentence is made out or not.
23. It is evident from the testimony of P.W.2 mother of the deceased wherein she has testified that on the date of occurrence applicant/ appellant Aakash Bhardwaj called deceased and ask her to come itkhori from where they will go to Kolkata and he will pick her from the way and her daughter (deceased) pick the Bus near the DC office and in the evening her mobile phone became switched-off. In the next morning the dead body of her daughter was found in the forest. She stated that in her presence phone was come.
24. The aforesaid fact has been substantiated by the testimony of the I.O. who had stated that he had recorded the confessional statements of the accused Aakash Bhardwaj and accused Lalit Kumar and both the accused-persons

admitted this fact that on the date of occurrence accused Aakash Bhardwaj has called his wife and ask her to come to Pitij from where they will go to Kolkata.

25. This witness has further stated that in the confessional statement they had admitted that they picked her(deceased) near forest guest house Pitij and they were in Scorpio which was driven by the accused Lalit Kumar and Aakash and his wife were in middle seat and after sometimes the Aakash took mobile phone of his wife and switched off the same and suddenly he strangulate her with the help of nylon rope and Navin Kumar Mishra has closed her mouth and when she died they kept her to the Mesaundhi forest and as Aakash has apprehension she may not be dead, hence he cut her neck from the knife and thereafter thrown the dead body in the Mesaundhi forest and then they went to Ranchi .

26. However, this Court is conscious with the fact that the confessional statement before police is not strong evidence unless it disclosed some recovery. Section – 27 of Evidence Act dealt with this situation and it states that the confessional statement before the police is admissible with respect to the recovery. In the instant case it is evident that on the basis of confessional statement recovery of weapon used in the crime has been recovered.

27. Further, P.W.1 has specifically stated that marriage of his daughter (deceased) was solemnized with Aakash Bhardwaj (appellant) in the year 2018 and after her marriage she lived peacefully 3-4 months, thereafter the dispute was started. The accused persons demanded money from his daughter for buying vehicle but he was unable to give the money. Thereafter, a panchayat was held in his village for the said dispute but

Punch stated to go to Mahila PS. Thus, from the testimony it is evident that the matrimonial dispute was going on in between the deceased and her husband.

28. Further it is settled position of law that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of *Modan Singh vs. State of Rajasthan, (1978) 4 SCC 435*, therefore the contention of appellant that seizure was perfunctory cannot be accepted herein.

29. Further as we discussed in preceding paragraph that during considering suspension of sentence which is the post-conviction stage, the presumption of innocence in favour 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.

30. Thus, on the basis of discussion made herein-above this Court, is of the view that it is not a fit case for suspension of sentence.

31. This Court, after having discussed the factual and legal issues and as per the discussion made hereinabove, is of the view that the present interlocutory application is not fit to be allowed.

32. Accordingly, I.A. No. 6608 of 2024 stands dismissed.

33. It is made clear that any observation made herein-above will not prejudice the case on merit, since, the criminal appeal is lying pending before this Court for its consideration.

34. In view thereof, I.A. No. 6608 of 2024 stands disposed of with the aforesaid observation.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

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