

IN THE HIGH COURT OF JHARKHAND

Cr. Appeal (DB) No. 634 of 2024

Paulus Surin

... **Appellant**

-versus-

The State of Jharkhand

... **Respondent**

For the Appellants : Mr. Sanjiv Kumar, Sr. Advocate
Md. Shadab Ansari, Advocate
Md. Javed, Advocate

For the Respondent : Mr. Pankaj Kumar, P.P

PRESENT: SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

ORDER

RESERVED On: 31.07.2024

Pronounced On: 08/08/2024

05/08.08.2024 I.A. No. 5944 of 2024

This appellant has been found guilty and convicted for offences under Sections 302/34 read with Section 120B of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.25,000/- (Rupees Twenty Five Thousand) and in default of payment of fine, appellant has been sentenced to undergo further rigorous imprisonment for one year.

2. Appellant thus, moves this application for releasing him on bail and also prays that his conviction be stayed.

3. Learned Senior Counsel appearing on behalf of the appellant submits that admittedly, the appellant has been convicted with the aid of Section 120B of the Indian Penal Code. He was the member of Legislative Assembly from Kalebira constituency of Jharkhand. Thus, he has been falsely implicated in this case.

It is his case that after the First Information Report was lodged being Karra Police Station Case No.27 of 2013, appellant was not even arrested though he was named in the First Information Report. Ultimately, he was granted anticipatory bail after four years of registering the First Information Report by the High Court, which was not interfered with by the Hon'ble Supreme Court.

It is the case of the appellant that since the appellant is fighting for justice for one of the rape victim, wherein deceased was accused, this case was filed. It is his case that the deceased being spy of police, was also

an accused of rape, and since the appellant was fighting for the rape victim, the appellant has been falsely implicated and it is further case of the appellant that since the area was inflicted by maoist, it is the maoist, who had committed the offence for which the appellant has been falsely implicated.

He further contended that the statement under Section 164 of the Code of Criminal Procedure recorded of one Jetha Kachchap cannot be considered in the eyes of law as at that point of time, he was in custody in the instant case itself. The aforesaid statement under Section 164 of the Code of Criminal Procedure was extracted by way of threat and coercion.

It is his further case that the appellant was not present at the spot when the murder was committed. He argues that there are no eye witnesses to the occurrence, which can remotely connect this appellant to this murder.

As per him, all the cases pending against the appellant have ended in acquittal and he has not violated the conditions of bail.

So far as stay of conviction is concerned, he submits that he being member of Legislative Assembly, he wants to contest the election and since the conviction is for life, he is debarred from contesting the elections.

4. Learned counsel for the State submits that there is overwhelming evidence that the appellant conspired to commit murder of the deceased. He being member of PLFI organization, also held meeting and directed his persons to commit murder of the deceased. Evidence clearly suggests the involvement of this appellant. So far as the case of rape of a girl is concerned, it is submitted that the appellant being an MLA cannot take law in his own hand.

So far as prayer for stay of conviction is concerned, it is submitted by the learned State counsel that the intention to contest the election cannot be a ground, far less an exceptional ground to stay the conviction.

5. After hearing the parties, we have also gone through the records.

6. We first deal with the prayer of the appellant, wherein he has prayed to stay his conviction. He has been convicted in this case for the offence punishable under Sections 302/34 read with Section 120B of the Indian Penal Code and has been sentenced to undergo imprisonment for life

with a fine of Rs.25,000/- and in default of payment of fine, he has to undergo further rigorous imprisonment for one year.

6. It is not disputed that the Court has power to stay conviction. The Hon'ble Supreme Court in the case of ***Shyam Narain Pandey versus State of U.P.*** reported in **(2014) 8 SCC 909** has held that stay of conviction means the accused is asking to stay the operation of the declaration of him being guilty.

7. In the case of ***Navjot Singh Sidhu versus State of Punjab and Another*** reported in **(2007) 2 SCC 574** and in the case of ***Ravikant S. Patil versus Sarvabhouma S. Bagali*** reported in **(2007) 1 SCC 673** the Hon'ble Supreme Court has held that unless there are exceptional circumstances, appellate Court shall not stay the conviction.

8. In ***Shyam Narain Pandey (supra)*** it has been held that seriousness of offence has also to be looked into and the Courts should be very wary in staying the conviction and it shall be done in a very rare exceptional cases where there is irreparable injury coupled with irreversible consequences resulting in injustice to the petitioner-appellant.

9. In this case, the ground, which has been put forth by the appellant to stay the conviction is that he intends to contest the election.

10. A similar question fell for consideration before this Court in ***Cr. Appeal (SJ) No.423 of 2017 [Hari Narayan Rai versus State through Directorate of Enforcement]***, wherein the appellant in the aforesaid case prayed for stay of conviction taking a ground that he wants to contest the election as he was a Member of Legislative Assembly and was a Minister in the Cabinet. This Court considered several judgments of the Hon'ble Supreme Court and vide order dated 14.11.2019 passed in I.A. (Cr.) No.10798 of 2018, arising out of Cr. Appeal (SJ) No. 423 of 2017, held that the ground to contest the election is not an exceptional ground to stay conviction.

While deciding the aforesaid case, the Court relied on the decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra versus Balakrishna Dattatrya Kumbhar*** reported in **(2012) 12 SCC 384** wherein at paragraph 15, the Hon'ble Supreme Court has held that the relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

In the aforesaid order, considering the observation of the

Hon'ble Supreme Court, this Court held that if the ground of losing a job of an employee, which amounts to deprivation of right to livelihood, is not a sufficient ground to stay conviction, then right to contest an election, which is a right lesser in degree to that of right to livelihood, also cannot be a ground to stay conviction.

11. The aforesaid order of this Court was also agitated before the Hon'ble Supreme Court of India in Special Leave to Appeal (Crl.) No(s). 10561-10562 of 2019 and the Hon'ble Supreme Court vide order dated 29.11.2019 dismissed the Special Leave to Appeal.

12. Thus, we are not inclined to accede to the prayer of the appellant to stay the conviction of the appellant, as no exceptional ground is made out to stay conviction. This interlocutory application for stay of conviction is, thus, dismissed.

13. So far as the prayer for grant of bail during the pendency of this appeal is concerned, we find that the appellant has been convicted on the ground that he is the main conspirator. He was the Member of Legislative Assembly at that point of time. The appellant was named in the First Information Report, but for long period of time, police did not take any step against him.

14. P.W.1 has stated that they had seen PLFI supremo Dinesh Gope and Area Commander Jetha Kachchap and others firing upon Bhushan Singh, the deceased. Similar was the statement of P.W.4. P.W.1 in paragraph 3 also stated that on 09.04.2013 when deceased went to the market, this appellant came with followers and threatened the deceased stating that they are creating difficulties for his PLFI organization. The deceased did not pay heed to the said threat given by this appellant, when this appellant told him that he will also see for how many days he remains alive.

P.W.6 also supported the factum of threat when this appellant had threatened him that he will see for how many days he will remain alive.

This evidence clearly suggests that this appellant had given threat of dire consequences to the deceased as he being an informer of the police was creating problem for this appellant and his group.

15. The corroborative evidence is statement of P.W.11. P.W.11 is the Judicial Magistrate, posted at Civil Court, Khunti. He recorded the confessional statement of Jetha Kachchap, who is also an accused in this

case and, in fact, the main accused. He stated that the deceased used to give information to the police and he has committed rape upon one girl and used to keep arms with him. The Member of Legislative Assembly, who is the appellant, had organized a rally and in one meeting this appellant had ordered to kill the deceased Bhushan Singh. After the meeting they stayed in the Village and in the meanwhile local persons disclosed that Bhushan Singh is seated on a stage (chaupal) near the house of Chama Oraon. When they came to know about the same, few persons proceeded whereas this appellant stayed there. The others committed murder of Bhushan Singh and fled. After the murder was committed when the others fled, this appellant proceeded towards Torpa and thereafter he came to Ranchi to his MLA residence.

The Judicial Magistrate stated that the statement was recorded by him and the same was given without any fear or pressure. He stated that same was recorded as per the directions of the Chief Judicial Magistrate, Khunti. He also stated that the said person was given time to think as to whether he wants to get his statement recorded under Section 164 of the Code of Criminal Procedure or not and all the consequences were also explained to him.

This is a corroborative evidence about the intention of the appellant and his involvement in the crime.

16. Threat perspective is already there, which is evident from the evidence of P.W.1, P.W.4 and P.W.6. From the evidence of P.W.1, P.W.4 and P.W.6, we find that this appellant had given threat to the deceased on 09.04.2013 and the deceased was murdered on 27.05.2013, within a very short span of time.

17. Considering the aforesaid material, we find that this is not a fit case where sentence of this appellant can be suspended and he be released on bail during pendency of this appeal.

18. Accordingly, the prayer for grant of bail to the appellant during pendency of this appeal is also hereby rejected.

This interlocutory application is, accordingly, dismissed.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)