

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.1013 of 2024

Sulendra Singh @ Guddu Singh @ Surendra Singh, aged about 25 years, son of Nilambar Singh, resident of village- Kalyanpur Road No.2, PO: Hatia, PS: Jagarnathpur, District Ranchi		...	Appellant
Versus			
The State of Jharkhand		...	Respondent

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

For the Appellant	: Mr.Anil Kumar Ganjhu, Advocate
For the Respondent	: Mr. Rajneesh Vardhan, A.P.P.

Order No.08/ Dated 26th November, 2025

I.A. No. 14187 of 2025

1. The present interlocutory application has been filed under section 430 of the BNSS, 2023 renewing the prayer for bail of the appellant.
2. Earlier prayer for suspension of sentence of the appellant has already been rejected by this court vide order dated 23.1.2025 passed in IA No. 12652 of 2024.
3. It is an application where ground of parity has been taken on behalf of the applicant as one of the co-convicts, namely, Aniket Sanga has been granted bail by a co-ordinate Bench of this Court in IA No. 5687 of 2025 [Cr. Appeal (DB) No. 366 of 2025].
4. It is very peculiar that present appeal i.e. Cr. Appeal (DB) No. 1013 of 2024 has been assigned to Mr. Rajneesh Vardhan to represent the State in the capacity of Additional Public Prosecutor while another Public Prosecutor has been assigned to represent the State in the case of

co-convict, namely, Aniket Sanga, the appellant in Cr.Appeal (DB) No. 366 of 2025.

5. This court has already passed an order giving suggestion to the learned Advocate General that in the appeals, arising out of the same impugned judgment of conviction, utmost care is to be taken to assign the Public Prosecutor. Further the allotment of the cases to one Public Prosecutor/Additional Public Prosecutor/Special Public Prosecutor arising out of the same P.S Case Number/S.T. Case Number will be helpful in avoid any conflicting order to be passed by this Court. The said order has been passed in Criminal Appeal (D.B.) No.1293 of 2022 and vide order dated 05.02.2025 passed in the said Criminal Appeal the aforesaid issue has attained finality.

6. The learned Advocate General has agreed to the aforesaid facts and the it has been brought to the notice of this court that due system has already been carved out to assign one Additional Public Prosecutor in a case where more than one convict/co-convict are there or in the application filed for consideration of bail of under trial prisoners arising out of the same judgment of conviction. But the present case appears to be in violation of that system.

7. Let a copy of this order be communicated to the learned Advocate General, to look into the matter, so that it may not be repeated in future.

Factual Matrix

8. So far as issue on merit is concerned, the prayer has been made in the present application for suspension of sentence dated 21.6.2024 passed by the learned Additional Judicial Commissioner-IV- cum Special Judge POCSO, Ranchi in connection with POCSO Case No. 32 of 2021, arising out of Jagarnathpur PS case No. 456 of 2020, whereby and whereunder, the appellant has been convicted for the offence under section 376(D) of IPC and Section 6 of POCSO Act and sentenced to undergo RI for 20 years and fine of Rs.10,000/-. In default SI for 6 months.

Submission of the learned Counsel for the appellant

9. The present interlocutory application has been filed renewing the prayer for bail of the appellant on the ground that one of the co-convicts, namely, Aniket Sanga has been granted bail by a coordinate Bench of this Court vide order dated 24.9.2025 passed in IA No. 5687 of 2025 arising out of Cr.Appeal(DB) No. 366 of 2025 appended as Annexure-2 to the instant interlocutory application.

10. It has also been submitted that the appellant has remained in custody for five years out of maximum imposed sentence of twenty years.

Submission of the learned Counsel for the state:

11. Mr. Rajneesh Vardhan, the learned Additional Public Prosecutor has vehemently opposed the prayer for suspension of sentence by referring to the said Annexure-2 to the instant interlocutory application stating that the said order cannot be any aid to the applicant

herein since there is no consideration of the order of rejection dated 23.1.2025 passed in IA No. 12652 of 2024, arising out of Cr. Appeal (DB) No. 1013 of 2024.

12. It has further been contended that period of custody can also not be a ground that too the appellant has only undergone five years against the maximum imposed sentence of twenty years.

Analysis

13. We have heard the learned counsel appearing for the parties and has appreciated the arguments advanced on their behalf.

14. Herein, primarily two grounds have been taken for suspension of sentence- first ground is the parity and second is period of sentence undergone by the appellant, i.e., five years against the maximum sentence of twenty years.

15. So far, the issue of parity is concerned, it is 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 co- accused/co-convict has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established.

16. Further it needs to refer herein that the issue of parity has been dealt 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 been 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.”

17. 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*** 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 scrutinize 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. It is evident from the proposition laid down in the said cases that the factual aspect governing the case of the culpability said to be committed by one or the other, if found to be exactly the same and having taken into consideration by the concerned Court, then only the principle of parity will be applicable.

19. So far as the issue of parity in suspending the sentence of co-accused, namely Aniket Sanga, (**Criminal Appeal (D.B.) No. 366 of 2025**) is concerned, we have considered the said order and found therefrom that the co-ordinate Bench while allowing the prayer for suspension of sentence has taken into consideration the fact that the age of the victim was not assessed and the report of the Forensic Science Laboratory does not ascertain that the victim was subjected to rape. Even the evidence of the victim does not appear to conclusively prove that the appellant and the other co-convicts had committed rape upon her, for ready reference the relevant paragraph of the aforesaid order is being quoted as under:

“On consideration of the submissions advanced by the learned counsel for the appellant there does appear several contradictions in the evidence of the witnesses as well as in the medical report. Admittedly, the age of the victim was not assessed and the report of the Forensic Science Laboratory does not ascertain that the victim was subjected to rape. Even the evidence of the victim does not appear to conclusively prove that the appellant and the other co-convicts had committed rape upon her.

In view of the scenario as depicted above, we are inclined to admit the appellant on bail. Accordingly, during the pendency of this appeal, the appellant is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each, to the satisfaction of learned Additional Judicial Commissioner-IV-cum-Special Judge POCSO, Ranchi in POCSO Case No. 32/2021, arising out of Jagarnathpur P.S. Case No. 456/2020.”

20. In the aforesaid order dated 24.09.2025 it is evident that the FSL report and testimony of the victim has been taken note of by the Co-ordinate Bench. From the perusal of the order dated 24.09.2025 it is

evident that there is no consideration the order dated 23.01.2025 passed in Cr. Appeal (DB) 1013 of 2024 by which the prayer for suspension of the sentence of the present applicant/appellant has been rejected.

21. It requires to refer herein that while rejecting the bail of the present appellant vide order dated 23.01.2025, this Court had also taken note of the testimony of the victim which would be evident from para-9 of the said order. Further in the said order this Court has also taken note of the wider prospect of the POCSO Act and has observed that the question that the DNA profile having not been matched is one of the grounds, but it is evident from the FSL report that the DNA profile, from the sample at source could not be generated, for ready reference the relevant paragraphs of the aforesaid order are being quoted as under:

“13. Thus, the amended Section 375 broadens the definition, making it clear that penetration with male organ is not at all necessary and penetration can be with any body part or object and that even attempt to penetrate or manipulate any body part can be considered as rape. As per the amended Section, use of fingers, objects or any body part to penetrate or manipulate is sufficient and that even attempt or manipulate without penetration can constitute rape.

14. Further, the question that the DNA profile having not been matched is one of the grounds, but it is evident from the FSL report that the DNA profile, from the sample at source could not be generated. The non-generation of the DNA profile therefore cannot be allowed to prevail upon the testimony of the victim, who has fully supported the prosecution version.

15. It is settled position of law that a medical or scientific opinion holds significant importance, however, medical or scientific opinion is not considered conclusive evidence in itself, and it does not solely determine whether a crime has been committed. Medical reports, while extremely important in the realm of jurisprudence, may occasionally fall short of complete accuracy. It is ultimately the Court

which has to weigh the medical evidence alongside other factual and circumstantial evidence to arrive at a conclusion.

*16. The Hon'ble Supreme Court in "**Pantangi Balarama Venkata Ganesh v. State of A.P.**," [(2009) 14 SCC 607]" held that the consistent and reliable statements of the victim and her mother regarding the incident of penetrative sexual assault cannot be disregarded merely on the ground that FSL records that "DNA of male organ could not be generated.-----"*

17. Thus, it is imperative that all the evidence surrounding the case is taken as a whole. Consistent and reliable statements of the victim cannot be disregarded merely on the ground that the DNA profile, from the sample at source could not be generated. Further, the presence of the appellant has not been denied, since, no question has been put by the appellant denying the presence at the place of occurrence.

18. This Court considering the aforesaid facts and taking into consideration the testimony of PW-1, victim, who has fully supported the prosecution case is of the view that it is not a fit case for suspension of sentence during pendency of the instant appeal.]

19. In consequence thereof, the interlocutory application, being I.A. No. 12652 of 2024 filed for suspension of sentence is hereby dismissed and disposed of."

22. Thus, from perusal of the aforesaid order dated 23.01.2025 it is apparent that this Court after due consideration of all the evidences available on record and further has taken into consideration the settled position of law particularly the consistent and reliable statements of the victim which cannot be disregarded merely on the ground that the DNA profile, from the sample at source could not be generated, has rejected the prayer for suspension of sentence on merit.

23. We have gone through the order dated 24.9.2025 passed by the coordinate Bench of this Court in IA No. 5687 of 2025, arising out of Cr. Appeal (DB) No. 366 of 2025 and found from the operative part where the consideration has been made, there is no reference of the testimony

of the witnesses. The said order also does not contain the rejection of the prayer for suspension of sentence of the present applicant, namely, Sulendra Singh @ Guddu Singh @ Surendra Singh, either it has not been placed or not been considered. We have already considered the case of the present applicant pertaining to suspension of sentence and has passed an order by dealing with the testimony of the PW-1-victim, who has fully supported the prosecution version in her examination.

24. Further, in the order dated 24.09.2025 the ground has also been taken that age of the victim has not been assessed and the report of the Forensic Science Laboratory does not ascertain that the victim was subjected to rape and further even the evidence of the victim does not appear to conclusively prove that the appellant and the co-convict have committed rape upon her.

25. We have considered the testimony of the doctor (PW-6) regarding age of the victim. The doctor has opined as follows:

“On Examination:-

*Breast tanner-I, public hair-Nil, Auxiliary hair-Nil
LMP- Not attained menarche.*

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Therefore, we are of the view that consideration so made by the Coordinate Bench is contrary to the testimony of the doctor.

26. Even accepting the fact that the conviction is not only under the POCSO Act rather the conviction is also under section 376 of the Indian Penal Code, as per aforesaid testimony of the doctor(PW-6) and as has been opined by him, the issue of minor cannot be said to be acceptable.

27. We are not making any comment in the order passed by the learned coordinate Bench, since we are not sitting in the Appeal. But since the issue of parity has been raised, as such, the aforesaid observation is required to be made for appreciation of the arguments advanced by the learned counsel for the applicant.

28. Thus, on the basis of the aforesaid discussion and taking into consideration the issue of applicability of principle of parity as referred above, is of the view that the order of suspension of sentence passed in favour of said co-accused namely Aniket Sanga cannot have any aid to the present appellant.

29. Further at this juncture it needs to refer herein that the Court while considering an application for suspension of sentence and grant of bail, is to consider only the prima facie merits of the appeal. Further it is settled position of law 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, 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 and the principle of bail being the rule and jail an exception is not attracted, if there is conviction upon trial, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Preet Pal Singh vs. State of U.P.*, (2020) 8 SCC 645. 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."*

30. 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.

31. Further, it is settled connotation of law that the appellate court should not reappreciate the evidence at the stage of consideration of suspension of sentence 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 and at this stage Court is only to see the prima facie case for its satisfaction.

32. So far, the second contention is concerned that the appellant has remained in custody for five years out of maximum imposed sentence of twenty years, as such on this ground alone the prayer for suspension of sentence may be allowed

33. In the aforesaid context it requires to refer herein 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.

34. At this juncture it requires to refer herein that the Hon'ble Apex Court in the case of *State of Haryana v. Hasmat, (2004) 6 SCC 175* has observed that 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, and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

“6. 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. 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.

7. 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 period the accused-respondent was granted parole

35. 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.

36. Recently the Hon'ble Apex Court in the case of *Chhotelal Yadav versus state of Jharkhand &Anr. [CRIMINAL APPEAL NO.4804/2025 @ Special LeavePetition (Crl.) No.15688/2025]* has observed that even in cases where the sentence is for a fixed term, there is a caveat that if there are exceptional circumstances, then the Court may decline to suspend the sentence and what could be those exceptional circumstances is not something exhaustive. It is for the Court concerned to look into those exceptional circumstances as may be pointed out by the State.

37. 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 substantive part of sentence having been undergone by the appellant.

38. This Court, on the basis of discussion made hereinabove and particularly taking into consideration that earlier the prayer for suspension sentence has already been dealt with by this Court on merit vide order dated 23.01.2025 and further no fresh ground is available, is of the view that present the present interlocutory application is not fit to be allowed.

39. Accordingly, the instant Interlocutory Application stands dismissed, as such, disposed of.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

Dated: 26 /11/2025
KNR/