

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 1254 of 2024

Rakesh Raut	...	...	Appellant
Versus			
The State of Jharkhand	...	...	Respondent

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

For the Appellant : Mr. Shailesh Poddar, Advocate
For the Respondent : Mr. V.S. Sahay, Advocate

Order No. 03: Dated 25th November, 2024

I.A. No. 10451 of 2024

Prayer

1. The instant interlocutory application has been filed on behalf of sole appellant under Section 430 (1) of BNSS, 2023 for suspension of sentence dated 09.09.2024 passed by the learned Additional Judicial Commissioner, VIII, Ranchi in S.T. Case No. 43 of 2019, whereby and whereunder, the appellant has been convicted for the offence under Section 302 of the Indian Penal Code and under Section 27(1) of the Arms Act and has been sentenced to undergo Rigorous Imprisonment for life with fine of Rs. 20,000/- for the offence under Section 302 IPC and in default of payment of fine further directed to undergo SI for one years; for the offence under Section 27 (1) of the Arms has been sentenced to undergo RI for 7 years with fine of Rs. 10,000/- and in default of payment of fine further SI for six months. All the sentences were directed to run concurrently.

Factual Matrix

2. The case of the prosecution, in short, is that the informant namely Baijanti Raut/ mother of deceased, was at her *maike* Dhurwa with her daughter Pritam Kumari for the last five months. On 08/10/2018 at about 08:30 a.m., she was informed by one grandmother, her neighbour of Tikli Tola, by her mobile no. 7091338966 that her husband Rakesh Raut has opened fire by his Rifle to her son Rahul Kumar Raut aged about 29 years, due to which, he died. On this information, she came and her *fardbayan* was recorded on the same day by Gonda P.S. at RIMS.

3. On the basis of the said *fardbayan*, Gonda P.S. Case No. 94/2018 under Section 302 IPC and u/s 27 of the Arms Act, was registered, against sole accused Rakesh Raut, the husband of the informant. After completion of investigation, charge-sheet was submitted u/s 302 IPC and u/s 27 of the Arms Act. Accordingly, cognizance was taken and thereafter case was committed to the Sessions Court.

4. The charges have been framed against the above accused u/s 302 IPC and u/s 27 of the Arms Act on 14/03/2019, which was explained and read over to him, in Hindi which was denied and claimed to be tried.

5. The learned trial court had found the charges proved against the appellant and convicted him for the offence under section 302 IPC and under Section 27(1) of the Arms Act and

accordingly appellant has been sentenced to undergo Rigorous Imprisonment for life with fine of Rs. 20,000/- for the offence under Section 302 IPC and in default of payment of fine further directed to undergo SI for one years; for the offence under Section 27 (1) of the Arms has been sentenced to undergo RI for 7 years with fine of Rs. 10,000/- and in default of payment of fine further SI for six months. All the sentences were directed to run concurrently.

6. The instant application has been preferred by the applicant/appellant for suspension of the sentence during pendency of the appeal.

Submission for the learned counsel for the appellant

7. Learned counsel for the appellant has submitted that the appellant is innocent. There are no eye witnesses to the occurrence and the alleged occurrence took place in the house of appellant when only the appellant and the deceased were present in the house.

8. It has been submitted that the appellant has strained relationship with the informant-wife as such the informant-wife and his daughter were living separately. The other son, at the time of incident, was studying in Gurgaon.

9. The deceased, who is the son of the appellant, was staying with the appellant out of his own will and there was good relationship between the appellant and the deceased. It has been submitted that there is no premeditation/intention

attributed to the appellant as it is the appellant who took the deceased to the hospital.

10. It has been submitted that the prosecution case is based on the fact that the appellant is a man of violent nature and used to threaten people with his licensed rifle, save and except this there is no other material or evidence against him to prove the charge under Section 302 IPC for intentionally killing his son.

11. It has further been submitted that there is nothing on record to show that the appellant has ever during his service tenure in CRPF has misconducted and behaved violently with any personnel. Even P.W. 2, who is brother of the deceased, at paragraph 13 has categorically deposed that there was good relationship between the appellant and the deceased. Likewise, P.W. 4, who is independent witness, the neighbor of the appellant, has also stated at paragraph 5 that there was good relationship between the appellant and the deceased.

12. The appellant in his defence has deposed that when the appellant asked his son to wake up early, his son attacked with a sharp-edged weapon, Chappar, after which the appellant brought rifle only to scare him but the deceased caught hold of the barrel of the gun and suddenly pulled it due to which there was accidental firing. Hence, at best the present case falls under Section 300 exception 4 of the IPC,

for which punishment is stipulated under Section 304-part II IPC for a term which may extend to ten years.

13. It has been submitted that the appellant has been in judicial custody for more than six years, as he was arrested on 08.10.2018 and since then throughout the trial, he is in custody.

14. Learned counsel for the appellant, based upon the aforesaid ground has submitted that the appellant is liable to be released on bail by suspending the sentence.

Argument of the Learned counsel for the respondent

15. Learned A.P.P. appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence. Submission has been made that all the prosecution case, including the informant-mother of the deceased, sister and younger brother of the deceased as also the Investigation Officer and the doctor, who conducted post mortem, has fully supported the prosecution case.

16. Further submission has been made that it is admitted case due to rifle shot made by the appellant the deceased died, however ground has been taken that it is due to accidental firing by the accused during the scuffle between the appellant and the deceased. But this fact has not been proved by the appellant during trial.

17. Learned APP based on the aforesaid ground has submitted that it is not a fit case to grant the benefit of suspension of sentence.

Analysis

18. We have heard learned counsel for the parties and gone across the finding recorded by the learned trial Court in the impugned judgment as also the testimony of the witnesses as available in the Lower Court Records.

19. It is a unique case where admittedly the father himself has killed his son by his licensed rifle at his residence. The prosecution witnesses have consistently deposed about the ill-nature of the appellant whereas the appellant has taken the ground that there was good relation between the appellant (father) and the deceased (son) and the accident occurred due to scuffle between the appellant (father) and the deceased (son) on the issue of asking by the father to his son to wake up early.

20. Therefore, this Court has gone across the testimony of the witnesses so as to come to the conclusion as to whether the case *prima facie* comes under the fold of Exception 4 to Section 300 IPC or not, which is the main argument advanced on behalf of appellant.

21. Before adverting to the factual aspect of the case, it needs to refer herein the admitted position of law that culpable homicide is not murder if it is committed without

premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

22. In the instant case from the testimonies of the witnesses, it is evident that the appellant is an ill-tempered person and previously he has acted in violent manner. PW.1 who is the daughter of the appellant, in para-3 of her testimony has stated that her father prior to this, three times had opened fire inside his house. Once he had opened fire on her younger brother Ronit Kumar. Then second time on her elder brother who died and also upon her had opened fire and third time he had opened fire due to being quarrel with the neighbors.

23. The aforesaid part of testimony of P.W.3 has fully been substantiated by the P.W.2 namely Ronit Kumar son of the appellant. He had stated at para-5 of his testimony that prior to the occurrence, his father had also opened fire on him on the day of Holi and he had fled away due to fear. The matter was not reported by him and at that time, his father had assaulted to his mother by the butt of the gun. He stated that

one day prior to occurrence, his brother had made a call to him and stated that his father used to quarrel with Rahul.

24. The aforesaid testimonies of the said witnesses have also been corroborated by the testimony of P.W.3 who is the wife of the appellant who at para 2 of her testimony has stated that her husband has rifle who earlier also two times, has opened fire on his son, but the pellet crossed towards wall and has also opened fire upon neighbours and that time also, the pellet crossed towards the wall.

25. Further after going through the testimony of appellant who himself presented as defence witness (D.W.1) has stated at para 5 of his testimony that at the time he was holding the butt of that rifle by his right hand and he was holding front hand guard by his left hand and there was scuffling between the appellant and the deceased. But he did not leave the barrel of the rifle and the deceased suddenly pull the barrel of the rifle, due to which the trigger pressed by the finger of his right hand and opened fire by the rifle and cartridge of rifle shot on his right side of the chest and crossed from back side and as such he fell down.

26. In nutshell as per the evidence led by the defence, when the appellant asked his son to wake up early, his son attacked appellant with a sharp-edged weapon, Chappar, after which the appellant brought rifle only to scare him but

the deceased caught hold of the barrel of the gun and suddenly pulled it due to which there was accidental firing.

27. It is evident from the material available on record that the question which has been put in defence or the defence which has been taken by the appellant by way of defence witness, none of the questions has been put in the cross-examination from the witnesses concerned.

28. Since this Court is at the stage of considering the *prima facie* case as to whether it is being made out for the purpose of suspension of sentence or not, hence, the part of the testimony as has been taken in defence- as to whether the Rifle which was said to be used in alleged commission of crime was preloaded or at that time of said scuffle it was accidentally triggered by the appellant or by the deceased is not being gone into as this question cannot be decided at this stage without appreciating the evidence in entirety reason being that while exercising power of suspension of sentence during pendency of appeal the Court has to see only the *prima-facie* case.

29. 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 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, 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.”

30. It is evident from the aforesaid judgment, that during considering suspension of sentence under section 389 of Cr.P.C which is the postconviction 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.

31. Recently, the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary & Anr., (2023) 6 SCC 123*** has been pleased to hold that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted and while considering the bail the Court should take care of 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 Hon'ble Apex Court further held that the appellate court should not reappreciate the evidence at the stage 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. For ready reference the relevant paragraphs are being quoted herein 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.”

32. Thus it is evident from the aforesaid settled position that in the 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 in that view of the matter, this Court is of the view that whether the instant case fall under the fold of Exceptions to the Section 300 IPC

cannot be decided without appreciating the evidence in entirety which can only be done during hearing of the appeal.

33. Accordingly, the instant Interlocutory Application is hereby dismissed at this stage.

34. It is made clear that any observation made hereinabove will not prejudice the case of the parties on merit since the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

Alankar/
A.F.R