

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. A (D.B.) No. 2062 of 2023

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1. Sudhir Dubey, aged about 35 years, son of Late Ram Prasad Dubey
 2. Devendra Dubey, aged about 35 years, son of Madan Dubey
- Both residents of village-Banpurwa, P.O. Tildag, P.S.-Garhwa,
District-Garhwa
3. Tinku Pandey @ Saurav Kumar Pandey, aged about 22 years, son of
Ashok Pandey, Resident of village-Bongasi, P.O.-Bongasi, P.S.-Danda,
District-Garhwa
- Appellants

Versus

The State of Jharkhand & Anr. Respondents

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants	: Mr. B.M. Tripathi, Sr. Advocate Mr. Naveen Kumar Jaiswal, Advocate
For the Resp.-State	: Mrs. Priya Shrestha, Spl. P.P.

10/Dated: 24th July, 2025

I.A. No. 5183 of 2025

1. Heard Mr. B.M. Tripathi, learned senior counsel for the appellant No.1 and Mrs. Priya Shrestha, learned Spl. P.P. for the State.
2. The instant interlocutory application has been filed on behalf of appellant No.1, Sudhir Dubey for granting bail after suspending the sentence during pendency of this appeal.
3. The appellant has been convicted and sentenced for the offences under sections 341/34, 323/34, 504/34, 506/34 and 376(D) of Indian Penal Code and the maximum sentence imposed upon him is R.I. for 25 years with a fine of Rs.1,00,000/- (Rs. One lakh) for the offence punishable under section 376(D) of IPC. The appellant has been acquitted from charges under section 3(2) (v) of SC/ST (POA) Act and sections 392/34 and 307/34 of I.P.C.
4. Learned counsel for the appellant submits that earlier I.A. No.10655 of 2024 was filed on behalf of the present appellant was dismissed as not pressed vide order dated 26.11.2024.
5. Learned counsel for the appellant has pointed out following errors of law in the judgment of conviction and sentence, which furnishes grounds for granting bail to the appellant:
 - (i) The occurrence is alleged to have taken place on 10.09.2021 but FIR was lodged on 26.09.2021 after due deliberation and concoction without offering any reasonable explanation for such inordinate delay.
 - (ii) The appellant was shown to the prosecutrix prior to T.I. Parade, which vitiates the outcome of T.I. Parade.

- (iii) The prosecutrix (P.W.1) and her boyfriend (P.W.2) have given self-contradictory statements and not reliable witnesses. Learned trial court has given undue weightage to their evidence. There is allegation of commission of rape by more than six persons against the prosecutrix but surprisingly no mark of injury or violence was found on the person of the victim, therefore, there is no corroborative evidence.
 - (iv) The remaining prosecution witnesses are close relatives of the victim.
6. The appellant is in custody since 26.09.2021 and never released on bail in the course of trial of the case. Therefore, appellant deserves bail during pendency of this appeal.
 7. On the other hand, Mrs. Priya Shrestha, learned Spl. P.P. for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that there is cogent and reliable evidence of the prosecutrix, who is sufferer of the alleged ghastly crime and her testimony finds corroboration from another eye-witness, who happens to be her boyfriend (P.W.2).
 8. It is further submitted that mark of injury or violence could not be detected due to lapse of considerable period from the date of occurrence and the date of medical examination of the victim.
 9. It is further submitted that the appellant has been held guilty for serious and heinous offence, who along with his associates (co-convicts) not only committed rape with the victim but also made video recording of the alleged incident and extended threatening to the prosecutrix to make the same viral on social media. They have also assaulted the prosecutrix and her boyfriend. The reason of delay in lodging FIR, under perplex situation as well as fear extended by appellant, has been sufficiently proved.
 10. The prayer for suspension of sentence of other co-convict, namely Bhola Chandravanshi has been rejected by this Court vide order dated 10.06.2025 passed in Cr. Appeal (D.B.) No.2051 of 2023 through I.A. No.6379 of 2025. The case of the present appellant is identical to the case of the said co-convict Bhola Chandravanshi. Hence, the present appellant does not deserve bail during pendency of this appeal and the present interlocutory application is fit to be rejected.
 11. We have perused the record of trial court as well as evidence adduced during trial in the light of contentions raised on behalf of both parties.
 12. It appears from the evidence of P.W.1 (prosecutrix) and P.W.2 (boyfriend of the prosecutrix) that there is direct allegation against the present appellant and his associates for commission of gang-rape upon the victim. The victim has also identified the appellant during T.I. Parade showing his complicity in commission of rape with her and the testimony of other witnesses also fortifies the allegation leveled against the appellant. The contentious points of argument raised by

learned senior counsel for the appellant could not be considered at present rather shall be taken into account at the time of final hearing of this appeal.

13. Considering the gravity of offence committed by the appellant and the materials available against him, we do not feel inclined to suspend the sentence of the appellant and granting bail to him during pendency of this appeal. Accordingly, I.A. No.5183 of 2025 stands rejected.

(RongonMukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Pappu/-