

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS.1892-1893 OF 2025
(Arising out of SLP(CrL.) Nos.18326-18327 of 2024)**

JANARDAN RAY

...APPELLANT(S)

VERSUS

THE STATE OF BIHAR & ANR. ETC.

...RESPONDENT(S)

J U D G M E N T

1. Leave granted.

2. The present appeals arise out of the common impugned judgment and order dated 20.07.2024 passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No.168 of 2023 and in Criminal Appeal (DB) No.330 of 2023, whereby the High Court has allowed the applications of the respondents - accused seeking suspension of sentence imposed by the Trial Court for the offences under Section 302 read with Section 34 of IPC and Section 27 of the Arms Act.

3. Heard learned counsel for the parties.

4. It appears that the respondents - Raushan Kumar Singh and Mohit Kumar were convicted for the offences under Sections 302 read with Section 34 of IPC and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for the life and also to pay fine of Rs.20,000/- and Rs.25,000/- respectively for the said offences.

5. The respondents being aggrieved by the same have preferred the Appeals before the High Court. They also filed applications seeking suspension of sentence pending the appeals which have been granted by the High Court.

6. In our opinion, the decision of this Court in the case of "Omprakash Sahni Vs. Jai Shankar Chaudhary and Anr., (2023) 6 SCC 123" clinches the issue involved in the present appeals. It has been observed while considering the scope of Section 389 of Cr.P.C as under.:-

"30. In *Kishori Lal v. Rupa* [*Kishori Lal v. Rupa*, (2004) 7 SCC 638], this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows : (SCC pp. 639-40, paras 4-6)

"4. 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 against. 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.

5. 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 earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view."

31. In *Vijay Kumar v. Narendra* [*Vijay Kumar v. Narendra*, (2002) 9 SCC 364] and *Ramji Prasad v. Rattan Kumar Jaiswal* [*Ramji Prasad v. Rattan Kumar Jaiswal*, (2002) 9 SCC 366], it was held by this Court 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. In *Vijay Kumar* [*Vijay Kumar v. Narendra*, (2002) 9 SCC 364], 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.

32. The aforesaid view is reiterated by this Court in *Vasant Tukaram Pawar v. State of Maharashtra* [*Vasant Tukaram Pawar v. State of Maharashtra*, (2005) 5 SCC 281] and *Gomti v. Thakurdas* [*Gomti v. Thakurdas*, (2007) 11 SCC 160].

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."

7. Having regard to the aforesaid settled legal position, we are of the opinion that the High Court has

committed gross error in appreciating the evidence already appreciated by the Trial Court at the time of considering the applications seeking suspension of sentence pending the appeal. Since this was a case of conviction under Section 302 IPC, the initial presumption available to the accused before conviction, would not be available to him. The High Court could not have suspended the sentence, reappreciating the evidence at the stage of Section 389 and trying to pick up a few lacunae or loopholes here or there in the case of prosecution. The consideration of High Court to the submission made on behalf of the accused that he had not misused the liberty during the trial or that the appeal was not likely to be heard in near future, could not be said to be the proper consideration for suspending the sentence of the accused, who have been convicted for the serious offence under Section 302, IPC. It is only in rare and exceptional circumstances, the benefit of suspension of sentence should be granted by the appellate court to the accused convicted for the serious offence under Section 302, IPC.

8. In that view of the matter, the common impugned order being in the teeth of settled legal position, the same is untenable at law and deserves to be set aside. Accordingly, the impugned order dated 20.07.2024 is set aside.

9. The respondents - accused are directed to surrender themselves before the Trial Court within a period of two weeks.

10. The appeals stand allowed.

11. Pending application(s), if any, shall stand disposed of.

.....J.
(BELA M. TRIVEDI)

.....J.
(PRASANNA B. VARALE)

NEW DELHI;
09TH APRIL, 2025.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).18326-18327/2024

[Arising out of impugned final judgment and order dated 20-07-2024 in CRADB No.168/2023 and CRADB No.330/2023 passed by the High Court of Judicature at Patna]

JANARDAN RAY

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR. ETC.

Respondent(s)

(IA No. 240887/2024 - EXEMPTION FROM FILING O.T. and IA No. 240886/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 09-04-2025 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Petitioner(s) : Ms. Sarvshree, AOR
Ms. Somyashree, Adv.

For Respondent(s) : Mr. Azmat Hayat Amanullah, AOR
Ms. Rebecca Mishra, Adv.

Ms. Minakshi Vij, AOR
Mr. Jagriti Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. In terms of the signed Judgment, the Criminal Appeals stand allowed.
3. Pending application(s), if any, shall stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)

(MAMTA RAWAT)
ASSISTANT REGISTRAR

(signed Judgment is placed on the file)