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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Order reserved on: 26.07.2022*

*Order delivered on: 04.08.2022*

+ **CRL.A. 729/2019, CRL.M.(BAIL) 49/2020, 8236/2020**

ANIL

..... Appellant

Through: Mr.Kanhaiya Singhal, Ms.Priyal Garg,  
Mr.Chetan Bhardwaj and  
Mr.Prasanna, Advocates.

versus

STATE

..... Respondent

Through: Mr.Aman Usman, APP for State with  
Inspector Lokendra, P.S. Neb Sarai.

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**ORDER**

**ANOOP KUMAR MENDIRATTA, J.**

**CRL.M.(BAIL) 8236/2020**

1. An application under Section 389 Cr.P.C. seeking suspension of sentence during the pendency of the appeal has been preferred on behalf of the appellant.
2. The appellant stands convicted vide judgment dated 25.04.2019 for the offences under Sections 498A/304B I.P.C. and Section 4 of Dowry Prohibition Act, 1961. Vide order dated 30.04.2019, the appellant has been sentenced to undergo RI for a period of 02 years with fine of Rs.10,000/- (in default of payment of fine, to undergo SI for 06 months) for offence under Section 498A I.P.C., to undergo RI for a period of 10 years for offence under Section 304B I.P.C. and to undergo SI for a period of 01 year with fine of Rs.5,000/- (in default of payment of fine, to undergo SI for 03 months) for offence under Section 4 of Dowry Prohibition Act, 1961. All the sentences to run concurrently.

3. Learned counsel for the appellant submits that there is strong case on merits, since the writing in the suicide note was never compared during the course of investigation. Also, during the course of trial, benefit of bail was extended to the petitioner vide order dated 08.04.2015 passed by this Court. The other contentions as raised in the appeal have also been raised challenging the impugned judgment on merits.

In support of the contentions, learned counsel for the petitioner has further relied upon *Major Singh and Anr. v. State of Punjab*, 2015(5) SCC 201; *Hira Lal & Ors. v. State (Govt. of NCT) Delhi*, (2003) 8 SCC 80; *Biswajit Halder @ Babu Halder & Ors. v. State of West Bengal*, (2008) 1 SCC 202; *Narayanmurthy v. State of Karnataka & Anr.*, (2008) 16 SCC 512; *Amar Singh v. State of Rajasthan*, (2010) 9 SCC 64; *Appasaheb and Anr. V. State of Maharashtra*, 2007 (1) Crimes 110 (SC); *S. Gopal Reddy v. State of Andhra Pradesh*, AIR 1996 SC 2184; *Devinder @ Kala Ram and Ors. v. State of Haryana*, (2012) 10 SCC 763 and *Budhiman Singh v. State of UP*, Criminal Appeal No.987 of 2016 decided on 20 April, 2018.

4. Learned APP for the State vehemently opposes the application and submits that vide order dated 19.09.2019, the application for regular suspension of sentence was permitted to be withdrawn. It is also pointed out that appellant has not even undergone half of the sentence since after his conviction vide judgment dated 25.04.2019 he had been on interim bail since 15.07.2020 and was directed to surrender on 28.07.2022 vide order dated 26.07.2022 passed by this Court.

5. I have given considered thought to the contentions raised.

At the outset, observations made by the Hon'ble Supreme Court in *Kishori Lal v. Rupa*, (2004) 7 SCC 638 : 2004 SCC (Cri) 2021 in para 4 to 6

may be noticed wherein the Supreme Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 in cases involving serious offences like murder, etc.

*“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 respondent-accused 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.”*

6. Also, in ***Preet Pal Singh v. State of Uttar Pradesh***, Crl. Appeal No.520/2020 arising out SLP (Crl) No.2102/2019 decided on 14.08.2020, the order passed by the High Court suspending sentence and granting bail during pendency of appeal for offences under Section 304B, 498A, 406 IPC and Section 3 & 4 of Dowry Prohibition Act was set aside by the Hon’ble Supreme Court after considering the evidence on record. The observations referred in para 27, 32, 36 and 39 are apt to be noticed:-

*“27. As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in ***Kashmira Singh v. State of Punjab (1997) 4 SCC 291*** and ***Babu Singh and Ors. v. State of U.P. (1978) 1 SCC 579***.*

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*32. Even though detailed examination of the merits of the case may not be required by courts while considering an application for bail but, at the same time, exercise of jurisdiction has to be based on well settled principles and in a judicious manner and not as a matter of course as held by this Court in ***Chaman Lal v. State of U.P. and Anr. (2004) 7 SCC 525***.*

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*36. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of*

*sentence under Section 389 of the 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. and Anr. (2018) 3 SCC 22.** 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) of the Cr.P.C.*

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*39. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.”*

7. In view of the mandate of Section 389 Cr.P.C., the principles are different in the case of sentences not exceeding three years as well as in case of bailable offences. Also the cases where the person is convicted of

offences punishable with death or imprisonment for life or imprisonment for a term not less than ten years, an opportunity is to be given to the public prosecutor under proviso to Section 389(1) Cr.P.C.

The court is obliged to consider whether any cogent grounds have been disclosed and whether there is likelihood of delay in disposal of appeal. Even though a detailed examination of the merits of the case may not be required for suspension of sentence but the exercise of jurisdiction is to be made in judicious manner (based on well settled principles) and for the reasons to be recorded in writing. The difference between grant of bail under Section 439 Cr.P.C. during trial as well as (suspension of sentence) Section 389 Cr.P.C. after conviction is well distinguished and presumption of innocence which is provided at the time of trial does not continue after the conviction of accused.

In view of above, there need to be compelling reasons for suspension of sentence and grant of bail under section 389 Cr.P.C. It is to be ascertained if there is patent infirmity in order of conviction or other cogent reasons exist for release on bail.

8. In nutshell, the reasons have to be germane to justify the grounds of bail. The mere fact that during the trial accused were granted bail and there was no allegation of misuse of liberty, is not of much significance, as the accused have been found guilty on conviction. The mere fact that during trial liberty of bail was not misused may not per se warrant suspension of sentence and grant of bail. However if the convict has undergone more than half of the sentence in case of fixed term sentence and disposal of appeal is likely to take some time, the matter needs to be seen in light of observations

made by the Hon'ble Supreme Court in **S.L.P. (CRL.) No.529/2021** titled as ***Sonadhar v. The State of Chhattisgarh:-***

*“..... b) The Delhi High Court Legal Services Committee would take up cases for those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the flexibility of filing a bail application before the High Court.....”*

9. Reverting back to the facts of the present case, the deceased committed suicide within five months of her marriage. Learned Trial Court has duly dealt with the detailed contentions raised on behalf of the accused and reached the conclusion that there were demands for money and car and torturing her by giving physical beatings. It was also noticed that there were injuries caused to the deceased, one to three days, prior to date of death. The testimony of the material witnesses was found reliable. The contention with reference to suicide note was also dealt in the judgment. It was also observed that accused failed to probabilize his defence even by preponderance of probability.

It may be reiterated that the Appellate Court, at the stage of suspension of sentence and release on bail till disposal of appeal, has to examine if there is any patent infirmity in the order of conviction that renders the conviction *prima facie* erroneous. The evidence is not to be re-assessed or re-analyzed to suspend the execution of the sentence. The detailed observations on merits of the case are not called for, at this stage lest it prejudices the case of the petitioner but the matter has been seen in the light settled principles of law.

Having regard to the evidence on record and detailed reasons recorded

by the learned Trial Court, I am of the considered opinion that no grounds for suspension of sentence till disposal of appeal are made out in the present case.

10. The application is accordingly dismissed. The observations herein have been made *prima facie* only for purpose of consideration of application for suspension of sentence.

A copy of this order be forwarded to the appellant through Jail Superintendent.

Appeal be listed in due course.

**(ANOOP KUMAR MENDIRATTA)**  
**JUDGE**

**AUGUST 03, 2022/SD**

