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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 28.05.2024
Pronounced on: 07.06.2024+ **CRL.A. 539/2020****KULDEEP SINGH SENGER** Appellant

Through: Mr. Kanhaiya Singhal, Mr. Ujwal Ghai, Ms. Aishwarya Sengar, Mr. Udit Bakshi, Ms. Vani Singhal, Mr. Prasanna, Mr. Teeksh Singhal, Ms. Deepali Pawar, Mr. Ajay Kumar and Ms. Anmol Chopra, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Ravi Sharma, SPP with Mr. Anjani Kumar Rai and Mr. Praphulll Kumar, Advocates.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.****CRL.M.(BAIL) 8255/2020 (suspension of sentence)**

1. By way of the present application under Section 389(1) of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the appellant seeks suspension of sentence awarded to him during the pendency of the present appeal.

2. The present appeal and the application for suspension of



sentence arise from the judgment dated 04.03.2020 and the order on sentence dated 13.03.2020, passed in Sessions Case Nos. 446/2019 and 449/2019. These cases stem from FIR Nos. 89/2018 and 90/2018, registered at Police Station Makhi, Unnao, Uttar Pradesh, which were adjudicated by the learned District and Sessions Judge (West) at Tis Hazari Courts, Delhi.

3. The appellant herein was convicted and sentenced as under:
 - i. Section 120B of IPC: Five years rigorous imprisonment and fine of Rs. 1,00,000/-, and in case of non-payment of fine, further imprisonment for one year.
 - ii. Section 193 of IPC: Seven years rigorous imprisonment and fine of Rs. 50,000/-, and in case of non-payment of fine, further rigorous imprisonment for eighteen months.
 - iii. Section 201 of IPC: Two years rigorous imprisonment and fine of Rs. 10,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.
 - iv. Section 203 of IPC: Two years rigorous imprisonment and fine of Rs. 10,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.
 - v. Section 211 of IPC: Seven years rigorous imprisonment and fine of Rs. 50,000/-, and in case of non-payment of fine, further rigorous imprisonment for eighteen months.
 - vi. Section 323 of IPC: One year rigorous imprisonment and fine of Rs.1,000/-, and in case of non-payment of fine, further rigorous imprisonment for three months.



- vii. Section 341 of IPC: One-month rigorous imprisonment and fine of Rs.500/, and in case of non-payment of fine, further rigorous imprisonment for seven days.
- viii. Section 304 Part (ii) of IPC: Ten years rigorous imprisonment and compensation of Rs. 10,00,000/- to be paid to the heirs of the deceased/victim.
- ix. Section 3 read with 25 of Arms Act: Three years rigorous imprisonment and fine of Rs. 25,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.

4. Learned counsel appearing on behalf of the appellant, while praying for suspension of sentence of the appellant, argues that the appellant has been languishing in jail since 13.04.2018, except for a brief period when he was granted the benefit of interim suspension of sentence by this Court, on account of marriage of his daughter, and the appellant, had admittedly, not misused the liberty granted to him. It is further argued that the appellant has undergone actual sentence of almost 06 years, out of a total period of 10 years awarded to him. It is further stated that all other co-accused persons who had undergone more than half of the imprisonment have already been granted the benefit of suspension of sentence. It is further contended by the learned counsel that the prosecution's case against the appellant is solely based upon circumstantial evidence. The only circumstantial evidence which the prosecution alleges against the appellant is that a phone call was made by the appellant to the



Superintendent of Police, who was not made an accused in this case, and the call detail records, location of mobile phones, etc. reveal the falsity of the case of prosecution. It is also submitted that testimonies of PW-42, 43 and 48 were uncorroborated and there were multiple material improvements in the same, which were ignored by the learned Trial Court. It is also argued that the prosecution has failed to establish any link between the alleged assault and the subsequent death of the victim, and thus, the appellant should not be held liable for the death of the deceased due to insufficient evidence and the case being not proved beyond reasonable doubt. Therefore, in these circumstances, it is prayed that the present application seeking suspension of sentence be allowed.

5. Learned SPP for the CBI, who opposes the present application, argues that the present application for suspension of sentence has been filed on the ground that the appellant has *prima facie* case in his favor, however, the appellant herein was the key person in the commission of offence. It is submitted that the appellant's conviction in the present case is for the offence of causing the death of a witness in a case of brutal rape. Noteworthy is the fact that the appellant also stands convicted for the offence of rape in the connected FIR, since the witness who has been murdered was a witness in this case itself of rape in which he stands convicted. Learned SPP has also referred to the observations made in the impugned judgment with respect to the role of present appellant and has argued that the offence committed by the appellant is grave and serious in nature. It is also stated that the appellant has not deposited/paid the fine which was



imposed upon him by the learned Trial Court. Therefore, it is prayed that the present application be dismissed.

6. This Court has heard arguments addressed by the learned counsel for the appellant and learned SPP for the CBI, and has gone through the material placed on record.

7. Since the appellant has sought suspension of the sentence awarded to him by the learned Trial Court, during the pendency of present appeal, it will be necessary to first consider in brief, the law on issue in question. In this regard, Section 389 of Cr.P.C. is extracted hereunder:

“**389.** Suspension of sentence pending the appeal; release of appellant on bail.—

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—



(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,
order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced...”

(emphasis supplied)

8. The Hon’ble Apex Court, in case of *Omprakash Sahni v. Jai Shankar Chaudhary (2023) 6 SCC 123*, has explained the meaning of suspension of sentence as well as the intent and idea behind incorporation of this provision. The relevant observations are extracted hereunder:

“21. Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to the Black's Law Dictionary (Seventh Edition), the word 'suspend' means, inter alia, to interrupt; postpone; defer. The Black's Law Dictionary (Seventh Edition) describes the word 'suspension' to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word 'suspend' as pointed out above, the New Oxford Dictionary of English (1998 Edition) describes suspend as temporarily preventing from continuing or being enforced or given effect or defer or delay an action, event or judgment.

22. **Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence.** The purpose of postponement of sentence cannot be achieved by detaining the convict in jail; hence, as



a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders.

23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of the competent jurisdiction. **Once the accused is held guilty, the presumption of innocence gets erased.** In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 of the CrPC, it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, **having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage, viz Sections 437, 438, 439 and 389(1) of the CrPC.”**

(emphasis supplied)

9. In the present case, the appellant herein has been awarded a maximum sentence of ten years and thus, his case would fall within the ambit of first proviso to Section 389(1) of Cr.P.C.

10. The Hon'ble Supreme Court, in the case of *Atul Tripathi v. State of Uttar Pradesh* (2014) 9 SCC 177, elucidated the legal principles and factors that courts must consider when deciding applications for suspension of sentence in cases where the punishment awarded to the convict is ten years or more. The pertinent observations in this regard are as follows:

“15. To sum up the legal position:

15.1. The appellate court, **if inclined to consider the release of a convict sentenced to punishment for death or**



imprisonment for life or for a period of ten years or more, shall first give an opportunity to the Public Prosecutor to show cause in writing against such release.

15.2. On such opportunity being given, the State is required to file its objections, if any, in writing.

15.3. In case the Public Prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court.

15.4. The **court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court,** etc. before passing an order for release.”

(Emphasis supplied)

11. In *Saudan Singh v. State of U.P.* 2021 SCC OnLine SC 3259, the Hon’ble Apex Court held that one of the broad parameters, for the purpose of considering applications for suspension of sentence in cases other than those involving life sentence, can be as under:

“7. We may note that there may be even convicts in custody in cases other than life sentence cases and in those cases again **the broad parameter of 50 per cent of the actual sentence undergone can be the basis** for grant of bail.”

(Emphasis supplied)

12. In light of the legal framework outlined above, this Court proceeds to examine the grounds raised in the present application, as argued by the learned counsel for the appellant in favor of granting suspension of sentence, and as opposed by the respondent.

13. The background of present case is that on 04.06.2017, the minor daughter of the victim in this case was enticed on the pretext of getting a job and was taken to the house of present applicant/



appellant Kuldeep Singh Senger where the appellant had raped her.

14. On 03.04.2018, the family of the minor rape victim had travelled to Unnao for a court hearing when her father, Surendra i.e. victim herein was brutally assaulted by the accused persons in broad daylight. The very next day, the police had arrested the victim Surendra on allegations of being in illegal possession of arms and he had ultimately succumbed to multiple injuries suffered by him, in police custody on 09.04.2018.

15. Trial of five cases arising out of aforesaid incidents, including the present case, were transferred from Uttar Pradesh to Delhi, by the Hon'ble Apex Court *vide* order dated 01.08.2019 passed in *Suo Motu Writ Petition (Criminal) 01/2019 with Transfer Petition (Criminal) Nos. 242-245/2019*, and the trial was directed to be concluded within a period of 45 days.

16. This Court has gone through the contents of the impugned judgment *vide* which the appellant herein was convicted. While a detailed review of the findings in the impugned judgment is neither required nor desirable at this stage, this Court however finds it essential to highlight the role of the appellant in the commission of offence in the present case.

17. The impugned judgment records that as soon as the victim in this case was seen in the village and he had some initial skirmishes with co-accused Shashi Pratap Singh, the said co-accused had called other accused persons and had informed co-accused Jaideep Singh Senger about the scuffle between him and the victim. This information was then conveyed to the appellant herein, who had then



immediately spoken to the Superintendent of Police, Unnao. The judgment further records that the sequence of events thereafter clearly established that under the patronage of the appellant Kuldeep Singh Sengar and his brother Jaideep Singh Sengar, the other accused persons in this case had assaulted the victim with leg and fist blows and then hit him with the barrel of a rifle.

18. The learned Trial Court has also held that the records of the case indicated that the appellant Kuldeep Singh Sengar had a strong motive, stemming from his frustration over pamphlets and WhatsApp messages circulated against him, which was clearly expressed in a recorded conversation with PW-48 Mahesh Singh on April 4, 2018, at 13:56 hours, whereby he had revealed his dissatisfaction with the situation's negative impact on his personal and political life, as well as on his family, including co-accused Jaideep Singh Sengar. The impugned judgment further records that despite being in Delhi, the appellant's repeated mobile calls as well as the recorded conversation unequivocally demonstrated his awareness and endorsement of the events unfolding on the ground in Unnao. Learned Trial Court has also observed that the appellant Kuldeep Singh Sengar had provided substantial encouragement and support to the other co-accused persons, and it was clear that without such patronage or protective cover, other co-accused would not have been able to assault, drag, and humiliate the victim and their family members in the manner they did. The impugned judgment has also categorically held that the call records between the appellant Kuldeep Singh Sengar, and co-accused Ashok Singh Bhadauria and K.P. Singh clearly indicated that



despite being away from village Makhi, the appellant was orchestrating the entire incident and in conspiracy with the aforementioned policemen, he had managed to falsely implicate the victim, Surrender Singh, in a case of possession of illegal firearms.

19. As far as the argument of the learned counsel for the appellant that there are several discrepancies and loopholes in the case of prosecution and under no circumstances, the appellant could have been held guilty of offence in question is concerned, in light of the aforesaid observations of the learned Trial Court after detailed appreciation of the evidence on record, which has been perused by this Court, even taking *prima facie* view of the matter, does not persuade this Court to accept this argument, at this stage of hearing application for suspension of sentence.

20. As held by the Hon'ble Apex Court, once the accused has been held guilty, the presumption of innocence gets erased and the Courts will have to consider the application for suspension of sentence by taking only a *prima facie* view of the role of the accused, gravity of offence, etc. as recorded in the judgment of conviction. Needless to say, the appellant herein will be entitled to raise all arguments and contentions on merits of the case at the stage of hearing of the present appeal before this Court.

21. Another very crucial aspect of the matter while deciding this case is the order dated 01.08.2019 passed by the Hon'ble Apex Court in *Suo Motu Writ Petition (Criminal) 01/2019 with Transfer Petition (Criminal) Nos. 242-245/2019*, by virtue of which protection had been provided to the minor rape victim as well as her lawyer, mother



and other immediate family members by CRPF. Further, the security of the said persons as provided by CRPF has not been withdrawn till date.

22. Furthermore, though the appellant herein has undergone more than half of the sentence imposed upon him, i.e. about 06 years out of 10 years of imprisonment awarded to him, this Court also remains conscious of the fact that the period undergone by a convict is only one of the several factors which are to be taken into consideration while adjudicating an application seeking suspension of sentence, and other factors such as gravity of offence, nature of the crime, criminal antecedents of the convict, impact on public confidence in court, *et al.* are also to be appreciated and kept in mind by the Courts. This Court in addition to these factors has kept in mind the crucial observations of the Hon'ble Apex Court regarding threat to the victim and the order passed for security to them.

23. As regards the antecedents of the appellant, he has already been convicted under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 376 of IPC *vide* judgment dated 16.12.2019 and *vide* order dated 20.12.2019 for the offence of rape of minor girl, and has been sentenced to undergo imprisonment for remainder of his life.

24. As far as the argument regarding the hearing of appeal on merit taking substantial time is concerned, this Court is of the opinion that on the last date of hearing i.e. 28.05.2024, learned counsels for the co-accused persons in connected appeals had sought time to address arguments on merits. The appeals are now listed on



07.08.2024, when the same will be taken up for hearing on merits and it will depend on the learned counsels as to how much time will they take to address arguments.

25. Therefore, in view of the foregoing discussion, and upon applying the principles laid down by the Hon'ble Apex Court in the judgments discussed hereinabove, this Court is not inclined to allow the present application seeking suspension of sentence at this stage.

26. Accordingly, the present application stands dismissed.

27. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

28. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JUNE 7, 2024/zp