

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2000 OF 2025
(Arising out of SLP(Crl.) No.12478 of 2024)

BALRAM DANGI

...APPELLANT(S)

VERSUS

VEER SINGH DANGI & ORS.

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.2001 OF 2025
(Arising out of SLP(Crl.) No.15173 of 2024)

AND

CRIMINAL APPEAL NO.2002 OF 2025
(Arising out of SLP(Crl.) No.14562 of 2024)

J U D G M E N T

1. Leave granted in all the matters.
2. The present appeals arise out of the impugned order dated 24.05.2024 passed by the High Court of Madhya Pradesh at Gwalior Bench in Criminal Appeal No.10286 of 2023 and orders dated 10.04.2024 in Criminal Appeal Nos.10455 of 2023 & 10286 of 2023 respectively, 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 Sections 148, 302/149 and 323/149 of IPC, pending the said Appeals.
3. Heard learned counsel for the parties.

4. It appears that all the three respondents - accused were convicted for the offences punishable under Sections 148, 302/149 and 323/149 of IPC and were directed by the Trial Court, i.e., 1st ASJ to the Court of IIInd ASJ, Datia in S.T. No.103 of 2018, to undergo R.I. for life for the offence under Section 302 and undergo other punishments as imposed by the Trial Court. It appears that the cross-case being S.T. No.28 of 2007 filed by the respondents - accused against the complainant, had also resulted into the conviction of the complainant and others for the offence under Sections 307/149, 324/149, 148 IPC.

5. Against the judgment and order of conviction and sentence passed against the respondents - accused, they have preferred the appeals before the High Court, in which they also applied for the suspension of sentence under Section 389(1) Cr.P.C. The said applications have been allowed by the High Court.

6. As transpiring from the impugned orders passed by the High Court, it *ex facie* appears that the High Court has not assigned any reasons while granting the applications seeking suspension of sentence, though it is mandatory under Section 389(1) to record the reasons before suspending the sentence of the respondents - accused, who have been convicted for the serious offence under Section 302 of IPC. It is also needless to say that the initial presumption of innocence is no more

available to the respondents - accused, who have been convicted for the offences under Sections 148, 302/149 and 323/149 of IPC.

7. 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 389 CrPC 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."

8. Having regard to the aforesated settled legal position, we are of the opinion that the High Court has committed gross error in simply recording the submissions of the learned counsels for the parties based on the findings recorded by the Trial Court and suspending the sentence pending Appeals without recording any reasons for the same. Since these were cases of conviction under Section 302 IPC, *the initial presumption available to the respondents - accused before conviction, would not be available to them.* The High Court could not have suspended the sentence, re-appreciating 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 reason that the Appeals were not likely to be heard in near future also would not be a valid ground for suspending the sentence of the respondents - 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.

9. In that view of the matter, the impugned orders being in the teeth of settled legal position, the same are untenable at law and deserve to be set aside.

10. In that view of the matter, the impugned orders passed by the High Court are set aside. The respondents - accused are directed to surrender themselves within two weeks from today. The Appeals are allowed.

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

12. The High Court is requested to hear the Appeals filed by the present respondents as well as the cross-appeal(s) filed by the complainant as expeditiously as possible.

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

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

NEW DELHI;
16TH APRIL, 2025.

ITEM NO.27

COURT NO.9

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).12478/2024

[Arising out of impugned final judgment and order dated 10-04-2024 in CRA No.10286/2023 passed by the High Court of Madhya Pradesh at Gwalior]

BALRAM DANGI

Petitioner(s)

VERSUS

VEER SINGH DANGI & ORS.

Respondent(s)

(IA No. 193532/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 193535/2024 - EXEMPTION FROM FILING O.T.)

WITH

SLP(Crl) No. 15173/2024 (II-A)

(IA No. 239454/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 239455/2024 - EXEMPTION FROM FILING O.T.)

SLP(Crl) No. 14562/2024 (II-A)

(IA No. 233051/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 233052/2024 - EXEMPTION FROM FILING O.T.)

Date : 16-04-2025 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. Kajal Sharma, AOR [through VC]
Mr. Rajiv Bakshi, Adv.

For Respondent(s) : Mr. Yogesh Tiwari, Adv.
Mr. Vikrant Singh Bais, AOR

Mr. Yatinder Singh, Sr. Adv.
Mr. Samir Ali Khan, AOR

Mr. Bhupendra Pratap Singh, D.A.G.
Mr. Yashraj Singh Bundela, AOR

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)

(signed Judgment is placed on the file)

(MAMTA RAWAT)
ASSISTANT REGISTRAR