

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 258 of 2020

1.Amarjeet Singh @ Chhotu
2.Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju
@ Sukhu Paun

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...

Appellants

Versus

State of Jharkhand

...

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Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants : Mr. R.S. Mazumdar, Sr. Advocate
Mr. Rohan Mazumdar, Advocate

For the Respondent : Mr. Bhola Nath Ojha, Spl. P.P.

C.A.V. On 02.02.2026 **Pronounced on 05/02/2026**
Per Sujit Narayan Prasad, J:

I.A. No. 1294 of 2026

Prayer:

1. The instant interlocutory application has been filed by the appellant no. 1 namely Amarjeet Singh @ Chhotu under Section 430(1) of BNSS, 2023 for suspension of sentence dated 25.01.2020 passed by the learned Additional Sessions Judge – I, West Singhbhum at Chaibasa in connection Special POCSO Case No. 01 of 2019 arising out of Noamundi P. S. Case No. 01 of 2019, whereby and whereunder, the appellants has been sentenced to imprisonment for life which shall mean imprisonment for the remainder of their natural life and fine of Rs. 50,000/- for the offence punishable under Section 376DA of the Indian Penal Code. In default of payment of fine, the convict will have to further undergo

rigorous imprisonment of one year. In default of payment of fine, the culprit shall have to undergo an additional RI of one year. No separate sentence has been awarded to the appellant u/s 376(2) (n) of the Indian Penal Code. In view of Section 42 of the POCSO Act, no separate sentence was inflicted upon the appellants u/s 6 of the Protection of Children from Sexual Offences (POCSO) Act also.

Prosecution Story:

2. The prosecution case lodged on the basis of written report submitted by the victim/ prosecutrix, before the Officer-in-Charge of Noamundi P.S., in brief, is that the prosecutrix is a 15 years old girl and she is resident of District Singhbhum West at Chaibasa and since last six years she was residing in the quarter of her maternal grandmother (Nani) at Tisco Camp the Balijharan.

3. On 19.12.2018, prosecutrix had left the house of her maternal grandmother (Nani) and came to her house at Kumhartoli. Thereafter, the maternal grandmother (Nani) of the prosecutrix came to her house and asked from her about the reason of leaving her house whereupon it was disclosed by the prosecutrix that the above named accused persons had made her naked video and they were committing rape on her repeatedly by threatening her on the ground of her said

naked video and being harassed by the said acts of the accused persons, she had come to her house at Kumhartoli.

4. It has been further alleged that the present appellant Amarjeet Singh @ Chhotu used to sell milk and in course of her stay in the house of her maternal grandmother (Nani), the prosecutrix used to go to the house of said accused Chhotu daily in the morning for bringing milk from there. One day, when there was no one in his house, the accused Chhotu @ Amarjet Singh called the prosecutrix inside his house for decanting rice and when the prosecutrix went inside the house of said accused, he bolted from door the inside and thereafter, both the Chottu @ Amarjeet and his friend Vikash @ Raju @ Shuru @Bhakt Bandhu Paun forcibly disrobed her and committed rape on her and when the prosecutrix started to cry, the said accused persons pressed her mouth.

5. The accused persons threatened the prosecutrix with dire consequences in case of disclosing about the incident by her to her family members. Thereafter when the prosecutrix went the next day, for bringing milk the accused Chhotu @ Amarjeet Singh showed the naked photo and video recording of the prosecutrix to her on a mobile and he threatened her that whenever they shall call, she will have to come there otherwise they shall post her naked photo and video recording on face book.

6. On the basis of said threatening and naked photos and videos the above-named accused persons committed rape on the prosecutrix repeatedly since the month of April, 2018 to the month of September, 2018 and they were threatening the prosecutrix that if she discloses about it to anyone, she will have to face dire consequences.

7. It has been further alleged that the prosecutrix was too afraid and hence the matter could not be reported to the police earlier and on being consoled by her maternal grandmother (Nani), the prosecutrix came to police station on 04.01.2019 and gave a written application to the Officer-in-Charge of the Noamundi Police Station.

Submission on behalf of appellant no. 1

8. Learned senior counsel for the appellant no.1, has submitted that earlier this Court has dismissed one interlocutory application filed by the present appellant no.1 being I.A. (Cr.) No. 1518 of 2024 vide order dated 13th March, 2024 whereby the prayer for suspension of sentence of the appellant no.1 has been rejected.

9. Submission has been made that reason for filing the instant interlocutory application on behalf of the appellant no.1 is that after the rejection of the earlier interlocutory application of the appellant no.1, one of the co-convicts namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @

Raju @ Sukhu Paun has been allowed to be released on bail after suspension of sentence by the Co-ordinate Bench of this Court vide order dated 08.12.2025 passed in I.A. (Cr.) No. 15933 of 2025 (in Cr. Appeal (DB) No. 258 of 2020).

10. The learned Senior Counsel on the basis of the aforesaid fact has raised the issue of parity and has submitted that since the prayer for suspension of sentence of similarly placed co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has been allowed, therefore the prayer for suspension of sentence of appellant no.1 is fit to be allowed.

11. The learned senior counsel has further submitted that from perusal of order dated 08.12.2025 passed in I.A. (Cr.) No. 15933 of 2025 by which co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has been ordered to release on bail, it would be evident that learned co-ordinate Bench has taken into consideration the medical report as well as absence of the nude video purportedly of the victim and based upon that consideration the prayer for suspension of the sentence of the said co-convict has been allowed, therefore, the prayer for suspension of the sentence of the appellant no.1 may be allowed on the basis of the aforesaid finding of the co-ordinate Bench.

12. It has further been submitted that the appellant no. 1 is languishing in judicial custody since the month of January, 2019 and based upon the same the prayer has been made for suspension of sentence in connection with the present case.

Submission of learned Spl.P.P for state

13. The learned Spl. Public Prosecutor appearing for the respondent-State has vehemently opposed the prayer so made in the present interlocutory application.

14. It has been submitted that earlier the co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paunb has filed an Inter-locutory Application being I.A. No.2073 of 2022 before the co-ordinate Bench of this Court and the said interlocutory application of the co-convict had been dismissed vide order dated 6.6.2022 after due appreciation on merit of the case. But the same co-ordinate Bench of this Court vide order dated 08.12.2025 passed in I.A. (Cr.) No. 15933 of 2025 has allowed the prayer of the suspension of sentence of the said co-convict after taking into consideration the custody of the said co-convict as well as merit of the case.

15. The learned Special Public Prosecutor by referring the aforesaid fact has submitted that order dated 6.6.2022 passed in I.A. No.2073 of 2022 by which prayer for suspension of sentence of the said co-convict was dismissed

on merit has not been assailed before the higher forum i.e. Hon'ble supreme court and thereafter again I.A was filed for the same relief which was allowed vide order 08.12.2025, therefore the benefit should not be granted to the appellant no.1.

16. The ground has also been taken that from perusal of order dated 08.12.2025 passed in I.A. (Cr.) No. 15933 of 2025 by which co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has been ordered to release on bail, it would be evident that the earlier order of rejection of bail of the appellant no.1 has not been placed before the co-ordinate Bench which is nothing but suppression of material fact which led the co-ordinate Bench passing the order allowing the interlocutory application filed by the co-convict, namely, Babli Singh @ Babla Singh @ Ritlal Singh Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun.

17. Learned Additional Public Prosecutor, based upon the aforesaid ground, has seriously opposed the prayer so made in the instant interlocutory application and has submitted that since earlier the prayer for suspension of sentence of the appellant no.1 has already been dismissed on merit and further there is no change in the circumstances or fact of the

case as such the prayer for suspension of sentence of the appellant no.1 is fit to be dismissed.

Analysis

18. We have heard the learned counsel for the parties, gone across the finding recorded by the learned trial court in the impugned judgment.

19. The ground has been taken on behalf of the appellant no. 1 regarding parity from the co-convict, namely, Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun.

20. It needs to refer herein that the prayer for suspension of sentence of the present appellant no. 1 has already been considered by this Court and vide order dated 13th March, 2024 passed in interlocutory application being I.A. (Cr.) No. 1518 of 2024 the same has been rejected on merit.

21. This Court, on perusal of the order dated 13th March, 2024, passed in I.A. (Cr.) No. 1518 of 2024 has found the ground taken on behalf of the appellant no. 1 as also the objection raised on behalf of the learned State counsel, thereafter, the Court has considered the issue on merit as would be evident from relevant paragraphs-05 to 09 of the aforesaid order, for ready reference the said paragraphs are being quoted as under:

“5. Heard learned counsel for the parties, gone through the findings recorded by the learned trial court in the

impugned judgment as also testimony as available in the record.

6. This Court in order to appreciate the argument advanced on behalf of the parties has considered the testimony of P.W. – 4, victim and found therefrom that she has fully supported the prosecution version and remained consistent in her cross-examination. It has been deposed by her that she was subjected to rape by both the accused persons. The medical report also corroborates the aforesaid version.

7. The case of the appellant no. 2 namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has already been dealt with by the Co-ordinate Bench of this Court and as would appear from the order dated 06.06.2022 passed in I.A. No. 2073 of 2022, the prayer for suspension of sentence of the appellant no. 2 has already been rejected.

8. This Court, taking into consideration the testimony of P.W. – 4, victim, as also considering the fact that the allegation against the appellant no. 2 whose prayer for suspension of sentence has already been rejected by the Co-ordinate Bench of this Court vide order dated 06.06.2022 passed in I.A. No. 2073 of 2022 on the ground that P.W. – 4 has deposed about the commission of offence by taking the name of the appellant no. 1 also along with the appellant no. 2, is of the view that there is no reason to take different view so far as the appellant no. 1 is concerned.

9. Accordingly, Interlocutory Application being, I.A. (Cr.) No. 1518 of 2024 stands dismissed.”

22. It is evident from the aforesaid order that this Court while considering the issue of suspension of sentence of the present appellant (appellant no.1) has taken into consideration the testimony of the victim girl P.W. – 4, and found therefrom that she has fully supported the prosecution

version and remained consistent in her cross-examination. It has been deposed by her that she was subjected to rape by both the accused persons.

23. It is further evident from paragraph -7 of the aforesaid order that while rejecting the prayer for suspension of sentence of the appellant no.1, the Co-ordinate Bench had taken note of the order dated 06.06.2022 passed in I.A. No. 2073 of 2022 by which prayer for suspension of sentenced of the co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has been rejected.

24. For ready reference the relevant paragraph of the order dated 06.06.2022 passed in I.A. No. 2073 of 2022 by which prayer for suspension of sentenced of the co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has been rejected is being referred herein which reads as under:

It appears from the evidence of P.W-4 who is the victim that she is consistent with respect to the commission of rape upon her repeatedly by both the accused persons including the appellant no. 2. The medical report also indicates that sexual intercourse had taken place.

In view of the aforesaid facts, we are not inclined to admit the appellant no. 2 on bail. His prayer for bail is, accordingly, rejected.

25. From the perusal of the aforesaid order it is evident that the co-ordinate Bench of this Court while rejecting the prayer

for suspension of sentence of said the co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun on merit, has taken into consideration the fact that P.W-4 who is the victim is consistent with respect to the commission of rape upon her repeatedly by both the accused persons including the co-convict and the medical report also indicates that sexual intercourse had taken place.

26. It is pertinent to mention herein that the said co-convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun has again moved an application being I.A. (Cr.) No. 15933 of 2025 for suspension of sentence and vide order dated 08.1.2025, the said application was allowed by the same Co-ordinate Bench after again going into merit of the case, for ready reference the relevant paragraph of the said order is being quoted as under:

“Submission has been advanced by the learned senior counsel for the appellant no.2 that the basis for committing rape upon the victim appears to be a nude video but the said video has not been produced by the prosecution. It has been submitted that the appellant no.2 is in custody since 05.01.2019 and the evidence of the Doctor, who has been examined as PW-1, does not suggest that the victim was subjected to rape.

The learned Spl.P.P. has opposed the prayer for bail of the appellant no.2.

Regard being had to the period of custody undergone by the appellant no. 2, the medical report as well as absence of the nude video purportedly of the victim, we are inclined to admit the appellant no.2 on bail.

Accordingly, during the pendency of this appeal, the appellant no.2 is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I, West Singhbhum at Chaibasa in Spl. (POCSO) Case No. 01 of 2019.

27. It is evident from perusal of the aforesaid order that the co-ordinate Bench of this Court while allowing the prayer for suspension of sentence has taken into consideration the different factual aspect of the case and has observed that in *absence of the nude video purportedly of the victim, we are inclined to admit the appellant no.2 on bail.*

28. It needs to refer herein that from perusal of the aforesaid order it is also evident that the co-ordinate Bench has also taken note of the order dated 06.06.2022 passed in I.A. No. 2073 of 2022 by which prayer for suspension of sentenced of the co-convict appellant no,.2 has been rejected.

29. Thus, from the aforesaid it is evident that the same co-ordinate Bench had taken the different view on different date, even in the case where after post-conviction there is no change in the circumstances and the factual aspect of the case, then question arises herein that in the said circumstances whether benefit of parity can be extended to the appellant no.1.

30. It needs to refer herein that the law is well settled so far as the issue to be considered for the purpose of applying the

principle of parity that while applying the principle of parity, all surrounding facts are to be taken into consideration, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **Tarun Kumar vs. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486** wherein, it has held as under:

“18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.”

31. The Hon'ble Apex Court has further observed in the aforesaid judgment, i.e., **Tarun Kumar vs. Assistant Director Directorate of Enforcement (supra)** that it is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage

conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.

32. It is further settled connotation of law that Court cannot exercise its power in a capricious manner and has to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230***, wherein, it has been held as under:

“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously

record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [Pravinbhai Hirabhai Koli v. State of Gujarat, 2020 SCC OnLine Guj 2986] , [Khetabhai Parbatbhai Makwana v. State of Gujarat, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhraisinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [Siddhraisinh Bhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their

position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

33. Recently, the Hon’ble Apex Court in the case of **Sagar Vs. State of UP & Anr., 2025 INSC 1370** has categorically observed that while utilizing parity as a ground for bail, the same must focus on the role of the accused and cannot be utilized solely because another accused person was granted bail in connection with the same offence, and neither can this ground be claimed as a matter of right, the relevant paragraphs are being quoted as under:

“12. The High Court appears, plainly, to have erroneously granted bail to the accused-respondent on the sole ground of parity which it has misunderstood as a tool of direct application as opposed to parity being focused on the role played by the accused and not the thread of the same offence being the only common factor between the accused persons. On this count alone we can set aside the impugned judgment and order. However, we propose not to do so and proceed to delve further.

14. What flows from the above judgments, which have been referred to, only to the limited extent indicated above, is that the High Courts speak in one voice that parity is not the sole ground on which bail can be granted. That, undoubtedly, is the correct position in law. The word ‘parity’ is defined by the Cambridge Dictionary as “equality, especially of pay or position.” When weighing an application on parity, it is ‘position’ that is the clincher. The requirement of ‘position’ is not met only by involvement in the same offence. Position means what the person whose application is being

weighed, his position in crime, i.e., his role etc. There can be different roles played - someone part of a large group, intending to intimidate; an instigator of violence; someone who throws hands at the other side, instigated by such words spoken by another, someone who fired a weapon or swung a machete - parity of these people will be with those who have performed similar acts, and not with someone who was part of the group to intimidate the other by the sheer size of the gathering, with another who attempted to hack away at the opposer's limbs with a weapon."

34. Thus, from the aforesaid it is evident that while appreciating issue of parity, the Court should emphasize on the role played by the accused and not the thread of the same offence being the only common factor between the accused persons.

35. In the backdrop of the aforesaid settled position of law, we proceed to delve further.

36. Admittedly, from perusal of the order dated 08.12.2025 passed by the Co-ordinate Bench, it is evident that the order dated 13.03.2024 by which the prayer of suspension of the sentence of the present appellant (appellant no.1) has been declined, has not been referred in the order passed by the co-ordinate Bench, meaning thereby, it is apparent that the order dated 13.03.2024 by which prayer for suspension of sentence of the appellant no.1 was rejected, has not been taken note by the co-ordinate Bench at the time of consideration of prayer for suspension sentence of the co-

convict namely Bhakt Bandhu Paun @ Bhakta Bandhu Pan Vikash @ Raju @ Sukhu Paun and has gone into merit of the case and allowed the prayer of co-convict against whom parity is now claimed.

37. Further it is admitted fact that earlier vide order dated 06.06.2022 by which the prayer for suspension of sentence of the said co-convict has been rejected by the same co-ordinate Bench by taking note of the consistent statement/deposition of the prosecutrix/victim (P.W.4), but on 08.12.2025 the same co-ordinate Bench after taking into consideration the different aspect/fact, has allowed the prayer for suspension of said co-convict.

38. We are not making any comment on the order passed by the learned Co-ordinate Bench, since we are not sitting in appeal. But since the issue of parity has been raised, as such, the aforesaid observation is required to be made for appreciation of the arguments advanced by the learned counsel for the applicant.

39. From perusal of impugned order it is evident that there is allegation against the present appellant (appellant no.1) that he had committed gang rape on the prosecutrix/ victim, a minor girl under the age of 16 years, by constituting a group and acting in furtherance of a common intention, when she (prosecutrix) had gone to bring milk from the house of

the present appellant (appellant no.1) and thereafter the present appellant and co-convict continued to ravish the prosecutrix repeatedly by calling her at different places by blackmailing her on the ground of making her nude pictures and videos viral on social media like facebook and whatsapp etc.

40. P.W.4 the Victim has deposed in her testimony that she used to go to the house of the accused Chhotu @ Amarjeet (appellant no.1) for bringing milk from there and one day when she had gone to bring milk from his house, the Amarjeet told her to decant food in his house and when she went inside his house, he bolted the doors from inside. Thereafter, when she tried to cry, the accused persons Chhotu @ Amarjeet Singh (appellant no.1) and the Vikash Munda (co-convict) shut her mouth and they disrobed her and thereafter they committed rape on her.

41. Thus, it is evident from impugned order that all the prosecution witnesses have fully supported the prosecution story and the victim has remained quite consistent on the date, time and place of occurrence as well as the occurrence also.

42. On the basis of discussion made hereinabove this Court, therefore, is of the view that since we are dealing with the heinous offence like rape against the minor, therefore, the

principle of parity and the principle of judicial discipline on the strength of order passed by the co-ordinate Bench claiming parity of bail being granted to the co-convict, cannot be made applicable herein.

43. Further at this juncture it needs to refer herein that the Court while considering the application for suspension of sentence and grant of bail, is to consider only the *prima facie* merits of the appeal. Further it is settled position of law that there is difference between grant of bail in case of pre-trial arrest and suspension of sentence, post- conviction. In the earlier case, there may be presumption of innocence, 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 and the principle of bail being the rule and jail an exception is not attracted, if there is conviction upon trial, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P., (2020) 8 SCC 645***. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 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. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] 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) CrPC."

44. Thus, it is evident from the aforesaid judgment that during consideration of suspension of sentence which is the post-conviction stage, the presumption of innocence in favour of the accused cannot be available and at this stage, the Court's only duty is to see that the prima- facie case is made out or not, as such, the detailed appreciation of evidence is not required at this stage. It has further been observed by the Hon'ble Apex Court that 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) CrPC.

45. Further, it is settled connotation of law that the appellate court should not reappreciate the evidence at the stage of consideration of suspension of sentence 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 and at this stage Court is only to see the prima facie case for its satisfaction.

46. So far, the other contention is concerned that the appellant has remained in custody for seven years out of maximum imposed sentence of life-imprisonment, as such on this ground alone the prayer for suspension of sentence may be allowed.

47. So far as 7 years of custody against the sentence of life imprisonment is concerned, it is settled position of law that merely on the ground of custody, the sentence is not to be suspended, rather, the sentence can be a ground coupled with the attributability as has been found and substantiated in course of trial.

48. It is the settled position of law that the period of custody cannot be the sole ground for suspension of sentence, rather, the nature of crime as has been found to be proved against one or the other, the appellant herein, is to be taken into consideration and even if the convict has completed substantive sentence, that cannot be a sole ground for

suspension of sentence if the nature of offence having been proved in course of trial is serious.

49. The Hon'ble Apex Court in the case of ***Shivani Tyagi v. State of U.P. & Anr. 2024 INSC 343*** has categorically observed that mere factum of sufferance of incarceration for a particular period and likelihood of delay in disposal of cases, in a case where life imprisonment is imposed, cannot be a reason for invocation of power u/s. 389 without referring to the relevant factors and each case has to be examined on its own merits and based on the given parameters.

50. It has further been observed by the Hon'ble Apex Court that the factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.PC without referring to the relevant factors.

51. Further, it needs to refer herein that recently, the Hon'ble Apex Court in the case of ***Chhotelal Yadav versus State of Jharkhand & Anr. (Criminal Appeal***

no.4804/2025) has specifically observed that while considering the plea for suspension of sentence of life imprisonment is that the convict should be in a position to point out something very palpable or a very gross error in the judgment of the Trial Court on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed.

52. Since in the instant case there is grave allegation against the present appellant that he has committed gang rape with the minor under the age of 16 years, when she (prosecutrix) had gone to bring milk from the house of the present appellant (appellant no.1), therefore this Court is of the view that the alleged crime comes under the purview of heinous crime, hence as per the ratio laid down by the Hon'ble Apex Court in the case of ***Shivani Tyagi v. State of U.P. & Anr.(supra)***, the prayer for suspension of the present appellant (appellant no.1) is not fit to be allowed.

53. Herein, it is the specific attributability against the present appellant(appellant no.1) as would be evident from testimony of the prosecutrix/victim P.W.4 having been corroborated by the witnesses which having been taken note by this Court on earlier occasion also, while rejecting the prayer for suspension of sentence, therefore, is of the view that merely on the ground of custody having been undergone

by the present appellant of about seven years against the sentence of life imprisonment cannot be a ground for suspending the sentence leaving aside the attributability found to be substantiated in course of trial.

54. Therefore, on the basis of discussion made hereinabove, this Court is of the view that it is not a fit case for suspension of sentence of the present appellant.

55. Accordingly, **I.A. No. 1294 of 2026** stands dismissed.

56. It is made clear that any observation made herein will not prejudice the issue on merit as the appeal is lying pending for its consideration.

I Agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

05/02/2026
N.A.F.R.

Alankar/-