A GAJRAJ YADAV

v.

RAJENDRA SINGH @ DEENA & ORS.

(Criminal Appeal Nos.1695–96 of 2008)

B OCTOBER 24, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Criminal Procedure, 1973; S. 389:

C *Suspension of sentence, pending appeal – Power of appellate Court – Held: It is necessary for the appellate Court to consider as to whether reasons existed justifying suspension of sentence – In the instant case, High Court did not keep in view the correct principle of law while ordering* D *suspension and granting bail to accused – Hence, impugned order unsustainable and set aside – Penal Code, 1860 – S. 148, S. 325 r/w. s.149, S. 324 r/w s.149, S.323 r/w s.149, S.427, S.455 r/w s.149 and S.302 r/w. s.149 – Sentence.*

E **Respondents, accused persons, were convicted by trial Court for offences punishable under Sections 148, 325 read with Section 149, 324 read with Section 149, Section 323 read with Section 149, 427, 455 and 302 read with Section 109 of the Indian Penal Code, 1860. Pending appeals before the High Court, they had filed an** F **application for suspension of sentence in terms of s.389 Cr.P.C. High Court accepted the prayer and directed suspension of sentence subject to furnishing the bond with sureties to the satisfaction of the trial Court. Hence the present appeals.**

G **Allowing the appeals, the Court**

HELD: 1.1. One of the essential ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of

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execution of the sentence or order appealed against. If accused 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. [Para 10] [93-G-H; 94-A]

1.2. 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. [Para 11] [94-B-C]

Vijay Kumar v. Narendra and Ors., **[2002] 9 SCC 364**; *Ramji Prasad v. Rattan Kumar Jaiswal and Anr.*, **[2002] 9 SCC 366**; *Kishori Lal v. Rupa and Ors.*, **[2004] 7 SCC 638**; *Vasant Tukaram Pawar v. State of Maharashtra*, **[2005] 5 SCC 281 and** *Gomti v. Thakurdas and Ors.*, **[2007] 11 SCC 160, relied on.**

2. The order directing suspension of sentence and grant of bail is unsustainable and is set aside. [Para 15] [95-B]

Case Law Reference :

[2002] 9 SCC 364	**relied on**	**Para 12**
[2002] 9 SCC 366	**relied on**	**Para 12**
[2004] 7 SCC 638	**relied on**	**Para 13**
[2005] 5 SCC 281	**relied on**	**Para 13**
[2007] 11 SCC 160	**relied on**	**Para 13**

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1695–1696 of 2008.

From the final Order dated 31.7.2007 of the High Court of Judicature for Rajasthan, Bench at Jaipur in D.B. Crl. Appeal
B Nos. 1420 and 1431 of 2007.

Sushil Kumar Jain, Puneet Jain, Archana Tiwari and Pratibha Jain for the Appellant.

Jitendra Mohan Sharma for the Respondents.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in these appeals is to the order passed by a
D Division Bench of the Rajasthan High Court directing suspension of sentence awarded to the respondents. It was directed that such suspension was to take effect on each one of them by furnishing a bond in the sum of Rs.50,000/– together with two sureties in the sum of Rs.25,000/– each to the
E satisfaction of the trial Court for the appearance before the High Court and on dates of hearing unless otherwise directed. The order was to operate in respect of the respondents who are the appellants in Criminal Appeal Nos.1420 and 1431 of 2007 pending before the Rajasthan High Court. It is to be noted that
F 51 persons were put on trial and 18 were convicted. Along with the appeals, the respondents filed application for suspension of sentence in terms of Section 389 of the Code of Criminal Procedure, 1873 (in short 'Code').

3. Impugning the order passed by the High Court the
G informant has filed these appeals. The respondents along with one Girdhari were convicted by learned Sessions Judge, Kotputali Dist. Jaipur, Rajasthan, in Sessions case no.16 of 2001. The accused–respondents were convicted for offence punishable under Sections 148, 325 read with Section 149,
H 324 read with Section 149, Section 323 read with Section 149,

427, 455 and 302 read with Section 109 of the Indian Penal Code, 1860 (in short 'IPC'). A

4. The following sentences were imposed:

148 IPC	One year Six months RI
325/149 IPC	Two years RI and to pay a fine of Rs.500/–, in default of payment of fine, to further undergo RI for three months.
324/149 IPC	One year RI and to pay a fine of Rs.200/–, in default of payment of fine, to further undergo RI for two months.
323/149 IPC	Six months RI and to pay a fine of Rs.200/–, in default of payment of fine, to further undergo RI for two months.
427 IPC	Six months RI and to pay a fine of Rs.200/– in dafult of payment of fine, to further undergo RI for two months.
455/149 IPC	Three years RI and to pay a fine of Rs.500/–, in default of payment of fine, to further undergo RI for six months.
302/149 IPC	Imprisonment for life and to pay a fine of Rs.10000/–, in default of payment of fine, to further undergo RI for two years.

B C D E F

4. All the aforesaid substantive sentences were ordered to be run concurrently.

5. As noted above, out of 51 accused persons, 18 persons, including the appellants before the High Court were convicted and two had died during trial. They had prayed for suspension of the sentence which by the impugned order was accepted. G

6. The High Court stated that without appreciating the H

A case on merit and demerits of the case, it is allowing the petition.

7. Learned counsel for the appellant submitted that approach of the High Court is clearly erroneous. For exercising power under Section 389 of the Code certain parameters have been fixed which have not been kept in view by the High Court.

8. Learned counsel for the respondents, on the other hand, submitted that when the High Court took note of the fact that large number of persons were falsely implicated, the prayer in terms of Section 389 of the Code was to be accepted.

9. Section 389 of the Code empowers the Court to suspend the sentence pending the appeal and for release of the appellant on bail. Section 389 so far relevant reads as follows:

"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 he 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 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 baliable 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."

10. 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

A and grant of bail should not be passed as a matter of routine.

11. 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 looses 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.

12. In *Vijay Kumar v. Narendra and Ors.* [2002] 9 SCC 364 and *Ramji Prasad v. Rattan Kumar Jaiswal and Anr.*, [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. The impugned order of the High Court does not meet the requirement. In *Vijay Kumar's* case (supra) it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, 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. These aspects have not been considered by the High Court, while passing the impugned order.

13. The parameters governing Section 389 of the Code were highlighted in *Kishori Lal v. Rupa and Ors.*, [2004] 7 SCC 638, *Vasant Tukaram Pawar v. State of Maharashtra*, [2005] 5 SCC 281 and *Gomti v. Thakurdas and Ors.*, [2007] 11 SCC 160.

14. The High Court noted that except Girdhari other appellants (present respondents) were on bail during trial. A

15. The order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. Learned counsel for the accused–respondents stated that fresh applications shall be moved before the High Court. In case it is done, it goes without saying, that the High Court shall consider the matter in the proper perspective in accordance with law. B

16. Appeals are allowed. C

S.K.S. Appeals allowed.