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JEETU KHATIK

v.

STATE OF CHHATTISGARH

(Criminal Appeal No.603 of 2022)

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April 11, 2022

**[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]**

- Sentence / Sentencing – Suspension of execution of sentence – Trial Court had convicted and sentenced appellant u/ss.363 and 354 IPC and s.8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 – Prayer of appellant for suspension of execution of sentence declined by High Court –Appellant pleaded before Supreme Court that the High Court had taken too strict and stern view of the matter and failed to appreciate that the maximum sentence of imprisonment awarded in the matter was of three years*
- D – Held: The High Court, while referring to the basis of conviction of the appellant, did not make any comment as regards the fact that the maximum sentence of imprisonment is of three years and that the hearing of appeal is likely to take time – On the contrary, in the concluding part of the order impugned, the High Court ordered that the appeal be listed for hearing ‘in due course’ – If the appeal remains pending in due course and the appellant by that time serves out the sentence of imprisonment, and then, if there be any possibility of his acquittal or any modification of the conviction/sentence, the injury suffered by him would be practically irreparable – These aspects, in the given set of facts and circumstances of the present case, are themselves compelling reasons for suspension of execution of sentence during the pendency of appeal – There does not appear any other adverse reason to deny the relief to the appellant, like any criminal antecedents before the incident in question or any blame in the jail conduct – In the overall circumstances, execution of the remaining part of the sentence awarded to the appellant is ordered to be suspended during the pendency of appeal in the High Court; and he is ordered to be released on bail on such terms and conditions as may be imposed by the Trial Court – Bail – IPC – ss.363 and 354 – Protection of Children from Sexual Offences (POCSO) Act, 2012 – s.8.*

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*Preet Pal Singh v. State of U.P. & Anr., (2020) 8 SCC 645 – referred to.*

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**Case Law Reference**

<b>(2020) 8 SCC 645</b>	<b>referred to</b>	<b>Para 9</b>
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.603 of 2022.		

From the Judgment and Order dated 09.11.2021 of the High Court of Chhattisgarh at Bilaspur in I.A. No.01 of 2021 in Criminal Appeal No.1219 of 2021.

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Dr. Sangeeta Verma, Sameer Shrivastava, Advs. for the Appellant.

Ms. Asmtia Singh, Gautam Narayan, Advs. for the Respondent.

The following Order of the Court was passed:

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#### **ORDER**

Leave granted.

The challenge herein is to the order dated 09.11.2021, whereby the High Court of Chhattisgarh at Bilaspur has declined the prayer for suspension of execution of sentence during the pendency of Criminal Appeal No. 1219 of 2021.

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The appeal aforesaid has been filed by the petitioner-appellant against the judgment and order dated 24.09.2021 passed by the Additional Sessions Judge (F.T.C.), Manendragarh, District Koriya, Chhattisgarh in Special Criminal Case No. 15 of 2019.

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The substance of the accusation against the appellant had been that he kidnapped the 9-year-old victim from the custody of her legal guardian and with intention to outrage her modesty, used criminal force and with sexual intention, held her hand so as to forcefully take her to a place away from road. It had been the prosecution's case that the victim got released her hand and ran while shouting. The Trial Court found the appellant guilty and after recording conviction awarded sentences as follows: -

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A	Conviction Under Section 363 of Indian Penal Code.	Sentence R.I. for 2 years and fine of Rs.500/-, in default of payment of fine additional R.I. for 1 month.
B	Under Section 354 of Indian Penal Code.	R.I. for 2 years and fine of Rs.500/-, in default of payment of fine additional R.I. for 1 month.
C	Under Section 8 of the Protection of Children from Sexual Offences (POCSO) Act,2012.	R.I. for 3 years and fine of Rs.500/-, in default of payment of fine additional R.I. for 1 month.

(All the sentences were directed to run concurrently)

- The submissions on behalf of the appellant before the Appellate Court seeking suspension of execution of sentence had been that the Trial Court had overlooked major contradictions and omissions in the statements of witnesses; and that he was on bail during the trial but did not misuse his liberty and even after pronouncement of judgment, he was granted bail for a limited period. It was also submitted that the disposal of the appeal was likely to take some time and, therefore, the appellant may be released on bail.

- The High Court has proceeded to reject the prayer for suspension of execution of sentence with reference to the deposition of the prosecutrix, who was nine years of age, with its corroboration from the medical evidence. The High Court, of course, made no comments on the merits of the case but then, ordered that the appeal be listed for hearing in due course.

- Learned counsel for the appellant has submitted that the High Court has taken too strict and stern view of the matter and has failed to appreciate that the maximum sentence of imprisonment awarded in this matter is of three years and all the sentences are to run concurrently; and the appellant had already served two months of imprisonment until consideration of the prayer for suspension by the High Court.

- It is submitted that if further execution of sentence is denied, the appellant is likely to serve out the entire or substantial part of the sentence

of imprisonment and, thereafter, even if the Appellate Court would be persuaded to reverse the order of conviction, the deprivation of liberty for all this time could never be undone.

Learned counsel for the respondent, on the other hand, has strenuously argued that for grant of suspension of execution of sentence, special reasons were indeed required in this case; and, with reference to the decision of this Court in the case of *Preet Pal Singh v. State of*

*U.P. & Anr.:(2020) 8 SCC 645* (particularly paragraphs 35 and 38 thereof), has argued that for no special and compelling reason forthcoming in this case, the prayer for suspension of execution of sentence has rightly been rejected.

Having given anxious consideration to the rival submissions and having examined the material placed on record with reference to the law applicable, we are unable to agree with the submissions made on behalf of the respondent that, in this matter, where the maximum sentence of imprisonment is of three years, the appellant ought to be denied the concession of bail during the pendency of appeal.

The observations in paragraphs 35 and 38 of the decision in *Preet Pal Singh* (supra), as sought to be relied upon by the learned counsel for the respondent, read 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.(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

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- A sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC.

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- B 38. 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 reassess and/or re-analyse the same evidence and take a different view, to suspend the execution C of the sentence and release the convict on bail."

- D Significant aspect of the matter is that the observations aforesaid have been made by the Court in relation to a case where the accused was convicted, *inter alia*, of the offence under Section 304-B IPC and was awarded varying sentences, including that of life imprisonment.
- E Obviously, the observations aforesaid have to be read with reference to the factual background and context.

- F The relevant aspects of the present case are that the maximum sentence awarded is of three years' imprisonment. As regards the requirement of special or compelling reasons, noteworthy it is that one E of the grounds urged before the High Court on behalf of the appellant was that looking to the term of sentence awarded, when the disposal of the appeal is likely to take time, he may be ordered to be released on bail.

- G The High Court, while referring to the basis of conviction of the appellant, did not make any comment as regards the fact that the maximum sentence of imprisonment is of three years and that the hearing of appeal is likely to take time. On the contrary, in the concluding part of the order impugned, the High Court ordered that the appeal be listed for hearing 'in due course'.

- H Obviously, the High Court has not found the appeal worth assigning a priority for hearing. That being the position, if the appeal is to be heard only on its turn, the likely scenario is that it would not be taken up for hearing immediately by the High Court. If the appeal remains pending in due course and the appellant by that time serves out the sentence of imprisonment, and then, if there be any possibility of his acquittal or any

modification of the conviction/sentence, the injury suffered by him would A  
be practically irreparable.

In our view, these aspects, in the given set of facts and circumstances of the present case, are themselves of the compelling reasons for suspension of execution of sentence during the pendency of appeal. There does not appear any other adverse reason to deny the B relief to the appellant, like any criminal antecedents before the incident in question or any blame in the jail conduct.

In the overall circumstances, we are inclined to order suspension of execution of the remaining part of the sentence awarded to the appellant. C

Accordingly, the appeal is allowed; execution of the remaining part of the sentence awarded to the appellant is ordered to be suspended during the pendency of appeal in the High Court; and he is ordered to be released on bail on such terms and conditions as may be imposed by the Trial Court. D

Bibhuti Bhushan Bose

Appeal allowed.