OMPRAKASH SAHNI

v.

JAI SHANKAR CHAUDHARY & ANR. ETC.

(Criminal Appeal Nos. 1331-1332 of 2023)

MAY 02, 2023

[M. R. SHAH AND J. B. PARDIWALA, JJ.]

Code of Criminal Procedure, 1973 – s. 389 – The three respondents were convicted for the murder of the appellant's brother by the Trial Court and sentenced to life imprisonment – The order of conviction and sentence passed by Trial Court was challenged in appeal by the respondents before the High Court – Respondents prayed before the High Court that they be released on bail pending the final disposal of their appeals by suspending the substantive order of sentence of life imprisonment – High Court suspended sentence and ordered their release on bail – On appeal, held: The endeavour on the part of the Court 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 – While undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable – 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 s.389 and try to pick up few lacunas or loopholes here or there in the case of the prosecution, it is not correct approach – In the instant case, High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the First Information Report etc. – All these aspects, will have to be looked into at the time of the final hearing of the appeals filed by the convicts – High Court committed a serious error in suspending the substantive order of sentence of the convicts and their release on bail pending the final disposal of their criminal appeals – Order of High Court set aside – Convicts ordered to surrender.*

A **Allowing the appeals, the Court**

HELD:1. In *Vijay Kumar*, it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of the IPC, the court should consider the relevant factors like the nature of accusation made
B **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. [Para 31][162-G]**

C **2. 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 above said question is to be in the affirmative, as a necessary corollary, if ultimately the convict appears to be entitled**
D **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 take 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**
E **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 of the CrPC and try to pick up few lacunas or loopholes here or there in**
F **the case of the prosecution. Such would not be a correct approach. [Para 33][163-B-D]**

3. In the case on hand, what the High Court has done is something impermissible. High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings
G **in the First Information Report etc. All these aspects, will have to be looked into at the time of the final hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, this court is unable to agree with the contentions coming from the Senior Counsel for the convicts that, either there is**

H

absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour. For the very same reason this court was unable to accept the contention coming from the convicts through their Senior Counsel that, it would be meaningless, improper and unjust to keep them behind the bars for a pretty long time till they are found not to be guilty of the charges. [Para 34][163-E-G]

4. In the overall view of the matter, this Court is convinced that the High Court committed a serious error in suspending the substantive order of sentence of the convicts and their release on bail pending the final disposal of their criminal appeals. [Para 35][163-H]

Rajesh Ranjan Yadav Alias Pappu Yadav v. CBI **(2007) 1 SCC 70 : [2006] 9 Suppl. SCR 40;** *Ash Mohammad v. Shiv Raj Singh Alias Lalla Babu and Another* **(2012) 9 SCC 446 : [2012] 7 SCR 584;** *Bhagwan Rama Shinde Gosai and Others v. State of Gujarat* **(1999) 4 SCC 421 : [1999] 3 SCR 545;** *Sidhartha Vashisht Alias Manu Sharma v. State (NCT of Delhi)* **(2008) 5 SCC 230 : [2008] 8 SCR 220;** *Atul Tripathi v. State of Uttar Pradesh and Others* **(2014) 9 SCC 177 : [2014] 14 SCR 1188 – relied on.**

Kishori Lal v. Rupa and Others **(2004) 7 SCC 638 : [2004] 4 Suppl. SCR 628;** *Vijay Kumar v. Narendra and Others* **(2002) 9 SCC 364;** *Ramji Prasad v. Rattan Kumar Jaiswal and Another* **(2002) 9 SCC 366;** *Vasant Tukaram Pawar v. State of Maharashtra* **(2005) 5 SCC 281 : [2005] 3 SCR 630;** *Gomti v. Thakurdas and Others* **(2007) 11 SCC 160 : [2007] 5 SCR 90 – referred to.**

Case Law Reference

[2006] 9 Suppl. SCR 40	**relied on**	**Para 25**
[2012] 7 SCR 584	**relied on**	**Para 26**
[1999] 3 SCR 545	**relied on**	**Para 27**
[2008] 8 SCR 220	**relied on**	**Para 28**

A	**[2014] 14 SCR 1188**	**relied on**	**Para 29**
	[2004] 4 Suppl. SCR 628	**referred to**	**Para 30**
	[2005] 3 SCR 630	**referred to**	**Para 32**
	[2007] 5 SCR 90	**referred to**	**Para 32**

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1331-1332 of 2023.

From the Judgment and Order dated 16.09.2022 of the High Court of Judicature at Patna in CRADB Nos. 322 and 411 of 2021.

C R. Chandrachud, Ms. Fauzia Shakil, Agastya Sen, Advs. for the Appellant.

V. K. Shukla, Sr. Adv., Rakesh Kumar, Shailendra Mani Tripathi, Chand Qureshi, C. Thangaraja, S. Krishnamoorthy, K. Kumaravadivel, Manish Kumar, Advs. for the Respondents.

D The Judgment of the Court was delivered by

J. B. PARDIWALA, J.

1. These appeals are at the instance of the original first informant (brother of the deceased) and are directed against a common order E passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No. 322 of 2021 and Criminal Appeal (DB) No.411 of 2021 respectively by which, the High Court suspended the substantive order of sentence of life imprisonment imposed by the Trial Court on the respondent Nos. 1, 3 and 4respectively herein (convicts) and ordered their release on bail pending the final disposal of the two criminal appeals F referred to above.

FACTUAL MATRIX

2. It appears from the materials on record that the respondents Nos. 1, 3 and 4 respectively herein alongwith six other co-accused were G put to trial in the Court of Additional Sessions Judge-VII, Vaishali, Hajipur, District: Vaishali at Hajipur (Bihar) in Sessions Trial No. 280/2019 for the offences punishable under Sections 302, 120-B, 506 respectively read with Section34 of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 27 of the Arms Act, 1959 (for short, 'the 1959 Act')

3. The three respondents herein, namely, Jai Shankar Chaudhary, H Abhay Kumar and Ram Babu respectively were held guilty by the Trial

Court, of the offence of murder of the brother of the appellant herein, namely, Manish Kumar. The other co-accused were ordered to be acquitted.

4. The respondents Nos. 1, 3 and 4 respectively herein went in appeal before the High Court of Judicature at Patna, challenging the order of conviction and sentence passed by the Trial Court.

5. The case of the prosecution narrated by the Trial Court in its judgment dated 12.03.2021 is as under:

> *"The F.I.R in the instant case had been registered on 14.08.2018, on the basis of written application of informant Om Prakash Sahni, alleging therein that the informant Om Prakash Sahni on 13-08-2018 at about 01:00 P.M. alongwith his younger brother Manish Kumar, the Block Pramukh, Jandaha reached the Office of Block Pramukh, situated at block Jandaha by their alto car. Informant's brother went in his chamber. The driver of the B.D.O. came in his car and told thePramukh that B.D.O. has called him and on such information the Block Pramukh Manish Kumar went to the residence of B.D.O. in the B.D.O's car. After sometime the Pramukh came back in the same vehicle and as he was heading towards his chamber at about 03:00 P.M., the accused Jai Shankar Chaudhary and Abhay Kumar came and opened fire on informant's brother,the Block Pramukh upon the exhortation by accused Ram Babu Sahni to kill him. The informant's brother fell on the ground and both the accused waving their pistols, fled away on a motorcycle towards Mahua road. The other two accused Ram Babu Sahni and Binod Chaudhary also fled away from the place of occurrence on one another motorcycle, towards the same direction. The F.I.R. further states that the informant and the Pramukh's driver namely Anil Kumar alongwith certain others were present at the time of occurrence. They took him to the clinic of doctor Bindu Jha and on his reference, they took the injured to the Ganpati Hospital, Hajipur, where he was declared dead. Thereafter they took the deceased to Hajipur Sadar Hospital, where the postmortem examination was carried out and the police also reached there and carried out further proceeding. The F.I.R. also states that the election of block pramukh was*

held on 02-08-2018 and the Pramukh won the election. The informant in the F.I.R. also states that Umesh Singh Kushwaha, M.L.A., Mahnar, Binod Chaudhary s/o Ram Lakhan Chaudhary, Ajeet Kumar s/o Ram Babu Sahni Village Dulaur P.S. Jandaha, Kundan Sahni (Prakhand Shikshak) s/o Ram Nandan Sahni Vill Narharpur, Randhir Kumar S/o Late Masudan Prasad Singh Vill Narharpur, Ranjeet Kumar S/o Ram Briksh Singh Viii Narharpur, all from P.S. Jandaha and Ajay Thakur (Teacher) Sankul Sadhan Sevi, Jandaha Vill Nari Khurd P.S. Patepur Dist Vaishali had earlier threatened the informant at Bindi Chowk Road (north from Suresh Chowk) that they would not allow informant's brother to win the election and in the event, he wins, they would not let him live. The informant also states that these persons threatened him many times and he informed his brother of such fact. The present Prakhand Siksha Padadhikri, Jandaha also threatened that he should communicate to the Pramukh for not getting involved in the recruitment of Prakhand Shikshak, otherwise he may face dire consequences. The informant is under the belief that all the abovereferred persons in conspiracy, have committed the murder of informant's brother Manish Kumar."

6. In the course of the trial, the prosecution examined ten witnesses as under:

P.W. 1 Raj Kumar Sahni,

P.W. 2 Anil Kumar Sahni,

P.W 3 Rup Kala Devi,

P.W. 4 Dr. Shashidhar Kumar,

P.W. 5 Lal Babu Sahni,

P.W. 6 Laldeo Sahni,

P. W. 7 Om Prakash Sahni/ informant,

P. W. 8 Saroj Kumar Singh,

P.W. 9 Shobhakant Paswan (Investigating Officer) and

P.W. 10 Sunil Kumar Singh (Investigating Officer).

7. The Trial Court, upon evaluation of the oral as well as documentary evidence on record, in the final analysis observed in paras 40 and 41 respectively as under:

"40. On considering the submissions made by learned counsel of parties and the conjoint perusal of prosecution evidence including the cross-examination done by learned counsels for defence this court finds that the prosecution has led credible evidence that on 13-08-2018, at about 03:00 PM at Jandaha block, the accused Ram Babu Sahni and Binod Chaudhary exhorted Jai Shankar Chaudhary and Abhay Kumar Sahni to kill Manish Sahni. On such provocation, Jai Shankar Chaudhary and Abhay Kumar Sahni shot the bullet over Manish Sahni. He was then taken to doctor Bindu Jha in Jandaha and was referred from there to Hajipur. He was taken to Hajipur Ganpati Hospital by an ambulance, where the doctor declared him dead. As per the evidence of PW-7/ informant, the Manish Sahni alongwith him and the driver P.W. 2 reached the block Jandaha at about 01:00 P.M., they were sitting in his chamber, when the B.D.O. called him through his driver and he went to meet the B.D.O. to his resident from the B.D.O's vehicle. When he arrived back at about 03:00 P.M., as he was heading towards his chamber, the accused Ram Babu Sahni and Binod Chaudhary exhorted Jai Shankar Chaudhary and Abhay Kumar Sahni to kill Manish Sahni. On such provocation, Jai Shankar Chaudhary and Abhay Kumar Sahni shot the bullet over Manish Sahni and he fell on the ground. All the four accused fled away from northern gate towards Mahua road. Manish Sahni was then taken to doctor Bindu Jha in Jandaha and was referred from there to Hajipur. He was taken to Hajipur Ganpati Hospital by an ambulance, where the doctor declared him dead. His autopsy was performed at Sadar Hospital, Hajipur. The reason behind the occurrence in question is that the accused Jai Shankar Chaudhary was earlier elected the block Pramukh, but was defeated by Manish Sahni in no confidence motion. The Manish Sahni then became Block Pramukh. All the accused persons are said to conspire for commission of the alleged offence. The P.W. 1 Raj Kumar Sahni in his evidence has proved that the Pramukh Manish Sahni came from B.D.O's

vehicle and was heading towards his chamber, when accused Jai Shankar alongwith another opened fire over Manish Sahni. He has stated that it was Jai Shankar, who shot Manish Sahni. P.W. 2, the driver of Block Pramukh namely Anil Kumar Sahni also proved that Manish Sahni arrived from B.D.O's vehicle. The accused Jai Shankar Chaudhary and Abhay Kumar Sahni were already present there. The other accused Ram Babu Sahni and Binod Chaudhary reached there and said "kya dekhte ho goli maaro". Jai Shankar Chaudhary shot the bullet and thereafter Abhay Kumar shot the other bullet. The Pramukh fell on the ground and the informant and the witness P.W.2 are said to take him to hospital at Jandaha, from where he was referred to Hajipur Sadar Hospital, but he died on the way. P.W. 3 the wife of deceased is not an eye witness. However, she has testified the death of her husband by accused persons in the manner as stated by witnesses. In addition to these facts, she has also stated that when her husband won the election, he was given threat for life and she had advised her husband to remain alert. P.W. 5 in his statement-in-chief has proved the date and time of occurrence i.e., 13-08-2018 at 03:00 P.M. He, an eye witness also testifies the prosecution story that the accused Jai Shankar Chaudhary and Abhay Kumar opened fire over Manish Sahni on the provocation and exhortation by Ram Babu Sahni and Binod Chaudhary. P.W. 6 in his statement-in-chief also proves the date 13-08-2018 and time 03:00 P.M. of the alleged occurrence. He claims to be an eye witness of the occurrence and testifies that Binod Chaudhary and Ram Babu came by a bike and exhorted Jai Shankar Chaudhary and another person, whom he did not identify. On such exhortation and provocation, Jai Shankar Chaudhary and the other one opened fire over Manish Sahni. P.W. 8 Saroj Kumar Singh also claims to be an eye witness and testifies the fact that on the instigation of Binod Chaudhary, the accused Jai Shankar Chaudhary opened fire over Manish Sahni and he does not identify the other person, who also shot bullet over Manish Sahni. However, the date of occurrence has been contradicted by PW-8 to be 30.08.2018. The accused Binod Chaudhary whose name reflects in the

evidence repeatedly is not facing the instant trial before court. The doctor has proved the postmortem report and the injuries thereon are the two entry wounds, one each over left upper chest and over epigastrium alongwith two exit wounds, one each on right sub costal region impugned posterior axillary line and the other over right lumbar region in posterior axillary line. The two investigating officers who carried out the investigation, have proved genuineness of the investigation process as has been discussed in the preceding paragraphs. The defence could not bring such material or contradictions or any other evidence on record to falsify the facts placed and proved by prosecution.

41. Hence, on the basis of material and the evidence both oral and documentary, as available on record, this court arrives at conclusion that the prosecution has proved its case against accused Jai Shankar Chaudhary, Abhay Kumar alias Abhay Sahni and Ram Babu Sahni, beyond reasonable doubts that on exhortation of Ram Babu Sahni, the other two accused Jai Shankar Chaudhary and Abhay Kumar @ Abhay Sahni opened fire over Manish Sahni, causing his death and thereby committing his murder. This court finds them guilty of committing the murder of Manish Sahni in furtherance of their common intention."

8. The three convicts before us i.e., the respondents Nos. 1, 3 and 4 respectively prayed before the High Court that they be released on bail pending the final disposal of their appeals by suspending the substantive order of sentence of life imprisonment.

9. The High Court suspended the substantive order of sentence of all the three convicts and ordered their release on bail *vide* the impugned order dated 16.09.2022. The High Court observed thus:

"By the impugned judgment and order of conviction dated 12.03.2021 and order of sentence dated 15.03.2021 passed by the learned Additional Sessions Judge-VII, Vaishali at Hajipur, in Sessions Trial No. 280/2019 arising out of Jandaha P.S. Case No. 202/2018, the appellant has been convicted and sentenced as under:

Appellant's Name	*Conviction under Section*	*Sentence*		
		Imprisonment	*Fine (Rs.)*	*In default of fine*
CRIMINAL APPEAL (DB) NO. 322 of 2021				
Jai Shankar Chaudhary	*302/34 of the I.P.C.*	*Rigorous imprisonment for Life*	*50, 000/-*	*Rigorous imprisonment for six months*
	27 of The Arms Act	*Rigorous imprisonment for five years*	*-*	*-*
CRIMINAL APPEAL (DB) NO. 411 of 2021				
Abhay Kumar	*302/34 of the I.P.C.*	*Rigorous imprisonment for Life*	*50, 000/-*	*Rigorous imprisonment for six months*
	27 of the Arms Act	*Rigorous imprisonment for five years*	*-*	*-*
Ram Babu Sahni	*302/34 of the I.P.C.*	*Rigorous imprisonment for Life*	*50, 000/-*	*Rigorous imprisonment for six months*

75 per cent of the fine amount has been ordered to be paid to the widow of deceased Manish Sahni, namely, Rup Kala Devi and 25 per cent of the amount has been ordered to be paid to the State of Bihar.

In compliance of this Court's order dated 03.08.2022, the State has filed a written objection in terms of the first proviso to Section 389(1) of the Criminal Procedure Code.

We have heard Mr. Vasant Vikas, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 322 of 2021; Mr. Sanjay Singh, learned Senior Counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 411 of 2021 and learned Additional Public Prosecutor for the State.

Learned counsel appearing on behalf of the appellants have submitted that for the occurrence said to have taken place at 03:00 pm, at a public place, on 13.08.2018, the First Information Report came to be registered on 14.08.2018, based on written report of the informant (P.W.-7) submitted at 01:00 pm. The informant has claimed to be an eye-witness of the occurrence. However, there is no explanation for the late submission of the written report, naming these appellants as

the assailants. It has been argued that it is evident from the First Information Report that political rivalry between the deceased and these appellants has been disclosed as the reason why the deceased was killed by these appellants. They accordingly submit that disclosure of names of these appellants in the First Information Report, as the main assailants, is an afterthought and in that background, the late registration of First Information Report casts a serious doubt on the veracity of the prosecution's case. It has, further, been argued that though (P.W.-7), the informant, has claimed to be an eye-witness to the occurrence, who had carried the deceased in the injured condition to a nearby hospital and thereafter to Sadar hospital, after the deceased was declared dead in a private hospital; his own deposition contradicts this version as asserted in the First Information Report inasmuch as in response to a question during the course of cross-examination, he admitted that he had not gone to the Sadar hospital with the deceased. It has further been argued that though the appellants were produced during the course of the trial through video conference from the jail, but there is no evidence that the prosecution's witnesses identified these appellants during the course of the trial.

Learned Additional Public Prosecutor opposing appellants' prayer for bail has submitted that since the appellants are the main assailants, as disclosed in the First Information Report, which has been substantiated by all the eye-witnesses during the course of the trial, who have been consistent in their depositions and political rivalry between the deceased and these appellants, being an admitted fact, such animosity adds credence to the deposition of the eye-witnesses.

We have perused the impugned judgment and order of the trial court. We have given our anxious consideration to rival submissions advanced on behalf of the parties. We have perused the original copy of the First Information Report available with the lower court records from which it is manifest that there have been over-writings as regards the date when the said written report of the informant (P.W.-7) was submitted in the police station.

A *It is the prosecution's case, as disclosed in the First Information Report as also set up at the trial, that the occurrence had taken place at 03:00 pm on 13.08.2018 in the Block office. The deceased was Pramukh of the said block.*

It has been asserted in the First Information Report that
B *when the informant and the deceased were about to enter into his (deceased's) chamber in the Block office, appellant Jai Shankar Chaudhary and Abhay Kumar opened fire on the instigation of accused Ram Babu Sahani. The informant and others are said to have taken the deceased, in injured*
C *condition, to a private hospital, where he was declared dead. The dead body of the deceased was thereafter taken to Sadar hospital, where the inquest report was prepared by the police officer and post-mortem was also carried out on the same date, i.e., 13.08.2018. In the aforesaid background, we find substance in the submission made on behalf of the appellants*
D *that there was no cogent explanation for the informant to have filed his written statement on the next day at 01 :00 pm, implicating these appellants as the main assailants. Further, the informant (P.W.-7) does not prima facie appear to be truthful, particularly in view of the evidence of the prosecution witnesses to the effect that the body of the deceased was taken*
E *by villagers to the hospital and not by the informant.*

In the abovementioned peculiar facts and circumstances of the case, in our view, inordinate delay in filing of the written report leading to registration of First Information Report appears to be a valid ground for doubting the case of the
F *prosecution, for the purpose of exercise of discretion under Article 389(1) of the Criminal Procedure Code.*

Considering the facts and circumstances as noted above, the prayer made on behalf of the appellants for their release on bail is allowed.

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Let the appellants, namely, Jai Shankar Chaudhary [In Criminal Appeal (DB) No. 322 of 2021], Abhay Kumar @ Abhay Sahni and Ram Babu Sahni [In Criminal Appeal (DB) No. 411 of 2021] be released on bail during the pendency of appeal on furnishing bail bond of Rs. 10,000/- (Ten Thousand)
H *with two sureties of the like amount each to the satisfaction*

of learned Additional Sessions Judge-VII, Vaishali at Hajipur, in Sessions Trial No. 280 of 2019 arising out of Jandaha P.S. Case No. 202of2018.

The sentence shall remain suspended in the meanwhile. Realisation of fine shall also remain stayed."

(Emphasis supplied)

10. The original first informant (brother of the deceased) being aggrieved and dissatisfied with the aforesaid order passed by the High Court has come up in appeals before us.

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Mr. R. Chandrachud, the learned counsel appearing for the appellant vehemently submitted that the High Court committed a serious error in passing the impugned order thereby releasing the three convicts on bail pending final disposal of their respective appeals by suspending the substantive order of their sentence,in exercise of power under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC').

12. The learned counsel would submit that once the accused stood convicted for a very serious offence like murder, the presumption of innocence would no longer exist and the High Court is expected to be very slow in granting bail. He submitted that the High Court while considering the plea of the three convicts for suspension of substantive order of sentence has virtually appreciated the evidence. The High Court could not have gone into the issues like over-writings in the First Information Report, inordinate delay in lodging the First Information Report etc. while considering the plea of the convicts for suspension of sentence of life imprisonment.

13. The learned counsel would submit that the entire case of the prosecution is based on ocular evidence. The Trial Court having believed and accepted the version of the appellant herein, who is one of the eyewitnesses to the incident, the High Court could not have so lightly and casually suspended the substantive order of sentence of life imprisonment.

14. In such circumstances referred to above, the learned counsel appearing for the appellant prayed that there being merit in his appeals, those may be allowed and the impugned common order passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1, 3 AND 4 RESPECTIVELY (CONVICTS)

15. Mr. V.K. Shukla, the learned Senior Counsel appearing for the convicts, on the other hand, vehemently opposed the appeals, submitting that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order suspending the substantive order of sentence, imposed on the respective convicts by the Trial Court. He would submit that the entire case put up by the prosecution is highly doubtful and politically motivated. The prosecution has suppressed the true origin of the occurrence. He would submit that his clients have been falsely implicated in the alleged crime.

16. The learned Senior Counsel further submitted that this Court should be slow in exercise of its power under Article 136 of the Constitution while looking into a discretionary order, passed by the High Court under Section 389 of the CrPC. The impugned order passed by the High Court cannot be termed as absolutely vague or perverse and, in such circumstances, this Court may not disturb the impugned order.

17. In the last, the learned Senior Counsel submitted that it will take years by the time, the appeals come up for final hearing and for all that period of time his clients would be languishing in jail. He would submit that there are very fair chances of his clients getting acquitted in the criminal appeals and in such circumstances, there is nothing wrong if they are allowed to remain on bail, pending the final disposal of their respective criminal appeals.

18. In such circumstances referred to above, the learned Senior Counsel prayed that there being no merit in the appeals, those may be dismissed.

ANALYSIS

19. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

SECTION 389 OF THE CRPC AND THE LAW ON THE SUSPENSION OF SENTENCE:

20. Section 389 of the CrPC reads thus:

*"**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."

A 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
B 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.

C 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.

D 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.

E 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
F 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.

G 25. In ***Rajesh Ranjan Yadav alias Pappu Yadav v. CBI***, reported in (2007)1 SCC 70, it has been held under paras 8, 9 and 10 respectively, which are as follows:

> *"**8.** Learned counsel for the appellant then relied on the decision of this Court in Kashmira Singh v. State of*
H *Punjab [(1977) 4 SCC 291 : 1977 SCC (Cri) 559] . In para 2*

of the said decision it was observed as under : (SCC pp. 292-93)

> *"It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person:'We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?'What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."*

9. *Learned counsel for the appellant then relied on the decision of this Court in Bhagirathsinh v. State of Gujarat [(1984) 1 SCC 284 : 1984 SCC (Cri) 63] , Shaheen Welfare Assn. v. Union of India [(1996) 2 SCC 616 : 1996 SCC (Cri) 366] , Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , etc.*

A ***10.*** *In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule*
B *that because a long period of imprisonment has expired bail must necessarily be granted."*

(Emphasis supplied)

26. This Court, in the case of ***Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another***, reported in (2012)9 SCC 446, has
C observed in para 30, as follows:

*"**30.** We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy.*
D *There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment*
E *that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being*
F *had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused."*

(Emphasis supplied)

27. In ***Bhagwan Rama Shinde Gosai and Others v. State of***
G ***Gujarat***, reported in (1999) 4 SCC 421, wherein the appellants were convicted by the Trial Court against which, the appeal was pending before the High Court, the High Court successively rejected the prayer for grant of bail till the pendency of appeal after suspending the sentence.Thus, it has been held as follows:

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*"**3.** When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted."*

(Emphasis supplied)

28. In ***Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)***, reported in (2008) 5SCC 230 (popularly known as the Jessica Lal murder case), this Court had the occasion to consider the rival submissions as well as various judicial pronouncements referred to by both the sides over the prayer for bail.Thus, it has been held as follows:

*"**19.** We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or the other, therefore, are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the evidence on record. It, however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal court. Initial presumption of innocence in favour of the accused, therefore, is no more available to the applicant.*

xxx xxx xxx

A ***30.*** *....In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons.*
B *But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] 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 all the relevant factors like the nature of accusation made against the accused, the manner*
C *in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit*
D *of suspension of sentence can be granted.*

31. *In Hasmat [(2004) 6 SCC 175 : 2004 SCC (Cri) 1757 : JT (2004) 6 SC 6] , this Court stated : (SCC p. 176, para 6)*

> *"6. Section 389 of the Code deals with suspension of*
E *execution of sentence pending the appeal and release of the applicant 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*
F *execution of the sentence or order appealed. 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*
G *not be passed as a matter of routine."*
>
> *(emphasis supplied)*

32. *The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of*
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bail. What is really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail."
(Emphasis supplied)

29. In the case of ***Atul Tripathi v. State of Uttar Pradesh and Others***, reported in (2014) 9 SCC 177, whereunder apart from identifying the differences of consideration of prayer for grant of bail relating to pre-conviction stage as well as post-conviction stage, it has been held in para 14 which is as follows:

*"**14.** Service of a copy of the appeal and application for bail on the Public Prosecutor by the appellant will not satisfy the requirement of the first proviso to Section 389(1) CrPC. The appellate court may even without hearing the Public Prosecutor, decline to grant bail. However, in case the appellate court is inclined to consider the release of the convict on bail, the Public Prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. ....."*

30. In ***Kishori Lal v. Rupa and Others***, reported in(2004)7 SCC 638, this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 of the CrPC in cases involving serious offences like murder etc. Thus, it is useful to refer to the observations made therein, which are as follows:

*"**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*

A *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* B *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-* C *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* D *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* E *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 and Others***reported in (2002) 9 SCC 364 and ***Ramji Prasad v. Rattan Kumar Jaiswal and*** F ***Another***reported in (2002)9 SCC 366, it was held by this Court that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In ***Vijay Kumar*** (supra), it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of the IPC, the court should consider the relevant G 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 the case of H ***Vasant Tukaram Pawar v. State of Maharashtra*** reported in (2005)5

SCC 281 and ***Gomti v. Thakurdas and Others*** reported in (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 above said 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 take 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 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

34. In the case on hand, what the High Court has done is something impermissible. High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the First Information Report etc. All these aspects, will have to be looked into at the time of the final hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour.For the very same reason we are unable to accept the contention coming from the convicts through their learned Senior Counsel that, it would be meaningless, improper and unjust to keep them behind the bars for a pretty long time till they are found not to be guilty of the charges.

35. In the overall view of the matter, we are convinced that the High Court committed a serious error in suspending the substantive order of sentence of the convicts and their release on bail pending the final disposal of their criminal appeals.

A 36. In fact, it was expected of the Stateas the prosecuting agency to challenge the order passed by the High Court, but for some reason or the other, the State thought fit not to do anything further. Ultimately, it is the original first informant (brother of the deceased) who had to come before this Court.

B 37. We make it clear and it goes without saying that any observations touching the merits of the case are purely for the purpose of deciding the present appeals and shall not be construed as an expression of the final opinion in the pending criminal appeals before the High Court.

38. In the result, both the appeals succeed and are hereby allowed.

C 39. The impugned order passed by the High Court is hereby set aside.

40. The convicts are ordered to surrender before the Trial Court within a period of three days from today.

Ankit Gyan Appeals allowed.
(Assisted by : Aarsh Choudhary, LCRA)