



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. ... OF 2024**  
**[arising out of SLP (Crl.) No. 7162/2024]**

**JITENDRA & ORS.**

**Appellants**

**VERSUS**

**STATE OF UTTAR PRADESH**

**Respondent**

**ORDER**

Leave granted.

2. The High Court by the impugned judgment and order dated 14<sup>th</sup> March, 2024 has refused the prayer of the appellants (Jitendra, Kaluwa and Narendra Singh) for suspension of sentence under Section 389(1) of the Code of Criminal Procedure<sup>1</sup>.

3. The appellants stood trial in Sessions Trial No. 48 of 2015 (*State of Uttar Pradesh vs. Pappu, Ramesh Chandra, Jitendra and Kaluwa*) and Sessions Trial No. 464 of 2015 (*State of Uttar Pradesh vs. Narendra Singh*). All the five accused were convicted for murder under Section 302 read with Sections 147 and 149, Indian Penal Code<sup>2</sup> and sentenced to life imprisonment.

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<sup>1</sup> Cr. PC

<sup>2</sup> IPC

4. While pressing the prayer for suspension of sentence, learned senior counsel appearing on behalf of the appellants invited our attention to an order dated 14<sup>th</sup> March, 2024 passed by the High Court whereby the prayer for suspension of sentence of Pappu was granted. According to him, Pappu is the one to whom the role of slitting the throat of the deceased is attributed and there was no sufficient reason for the High Court to grant the prayer of Pappu but refuse that of the appellants on the same day.

5. Learned counsel appearing on behalf of the respondent-State of Uttar Pradesh has rightly invited our attention to that part of the order dated 14<sup>th</sup> March, 2024 passed by the High Court where the consideration that weighed in the mind of the learned Judges for grant of suspension of sentence in favour of Pappu is noted. By the time the sentence was suspended, Pappu had suffered imprisonment in excess of 10 years behind bars pending his criminal appeal whereas the appellants have suffered imprisonment for not more than 3 years.

6. In view of acceptance of such contention raised by learned counsel for the State, we do not intend to consider the prayer of the appellants based on parity.

7. It has also been pointed out to us by learned counsel for the respondent-State that the appellant-Narendra Singh has criminal antecedents. Reference in this behalf is made to paragraph 10 of the counter affidavit, where it has been pleaded that he is an accused in Case Crime No. 51 of 2005 and Case Crime No. 219 of 2015.

8. Learned senior counsel appearing for the appellant-Narendra Singh submits that he has no knowledge of Case Crime No. 51 of 2005; even the particulars of the offence the appellant-Narendra Singh is alleged to have committed are not mentioned by the respondent-State. Insofar as Case Crime No. 219 of 2015 is concerned, it is further submitted that the High Court has granted the appellant-Narendra Singh bail by an order dated 30<sup>th</sup> November, 2016 and the trial is yet to conclude. Also, he submits that upon being released on bail, the appellant-Narendra Singh has not misused the concession and, therefore, mere pendency of the trial should not stand in the way of this Court considering the prayer of the appellant-Narendra Singh for suspension of sentence.

9. We have looked into the judgment of the Sessions Court convicting the present appellants, which is under challenge in the criminal appeal before the High Court under Section 374(2), Cr. PC. It appears from the evidence of PW 3 that upon the exhortation of Ramesh Chandra, Pappu slit the throat of the deceased which ultimately led to his death.

10. It is true that the appellants were part of the unlawful assembly but the exact role played by them in the particular act of crime is not too clear. PWs 1 and 2 turned hostile. It is narration of the incident by PW 3, which was found to be trustworthy by the Sessions Court. Even if his version is to be entirely believed, at the most, the appellants had kept PW 3 and the others at bay so as to facilitate the crime of murder by Pappu. The appellants, thus, have an arguable case as to whether they could at all be convicted under Section 302, IPC. These are, however, our *prima*

*facie* observations and are not intended to influence the High Court while it proceeds to consider the appellants' criminal appeal which is pending since 2023.

11. That apart, mere pendency of the other trial where the appellant-Narendra Singh is an accused (on bail) cannot be regarded as sufficient for denying him the benefit of suspension of sentence in this case. After all, he is presumed to be innocent till found guilty.

12. Bearing in mind the above factors, we are of the view that the appellants have made out sufficient ground for suspension of sentence and release on bail upon such terms and conditions to be imposed by the Sessions Court.

13. The impugned judgment and order stands set aside.

14. The sentence of life imprisonment imposed by the Sessions Court on the appellants is hereby suspended. The appellants shall be released on bail, subject to such terms and conditions as may be imposed by the Sessions Court. In addition, it is made clear that in the event the appellants do not participate in the proceedings of the criminal appeal before the High Court or seek to protract it unnecessarily, the High Court shall be at liberty to cancel the bail of the appellants.

15. We repeat that the observations made in this order and grant of bail will not be treated as findings on the merits of the case.

16. The appeal is allowed in the above terms.

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

.....J.  
**[DIPANKAR DATTA]**

.....J.  
**[PRASHANT KUMAR MISHRA]**

**New Delhi;  
October 04, 2024.**

ITEM NO.32

COURT NO.16

SECTION II

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

**Special Leave to Appeal (Crl.) No(s). 7162/2024**

**(Arising out of impugned final judgment and order dated 14-03-2024 in CRLA No. 2443/2023 passed by the High Court of Judicature at Allahabad)**

**JITENDRA & ORS.****Petitioner(s)****VERSUS****STATE OF UTTAR PRADESH****Respondent(s)****IA No. 119423/2024 - EXEMPTION FROM FILING O.T.****Date : 04-10-2024 The matter was called on for hearing today.**

**CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA**  
**HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA**

**For Petitioner(s) Mr. J C Gupta, Sr. Adv.**  
**Mr. Yogesh Tiwari, Adv.**  
**Mr. Vikrant Singh Bais, AOR**

**For Respondent(s) Mr. Ajay Kumar Mishra, Sr. Adv.**  
**Mr. Shashank Shekhar Singh, AOR**  
**Ms. Ruchira Goel, Adv.**

**UPON hearing the counsel the Court made the following**  
**O R D E R**

1. Leave granted.
2. The appeal is allowed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

**(JATINDER KAUR)**  
**P.S. to REGISTRAR**

**(SUDHIR KUMAR SHARMA)**  
**COURT MASTER (NSH)**

[Signed order is placed on the file]