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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 09.01.2024*  
*Pronounced on: 24.01.2024*+ **CRL.A. 451/2020**

JAIDEEP SINGH SENGER@ATUL SINGH ..... Appellant

Through: Mr. Pramod Kumar Dubey,  
Senior Advocate with Mr.  
Hemant Shah, Mr. S.P.M.  
Tripathi, Mr. Akshay Rana and  
Mr. Deepanshu Nainwal,  
Advocates

versus

CBI ..... Respondent

Through: Mr. Nikhil Goel, SPP for CBI  
with Mr. Kartik Kaushal,  
Advocate  
Mr. Mehmood Pracha and  
Mohd. Shameem, Advocates  
for complainant**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.****CRL.M.(BAIL) 1456/2023 (suspension of sentence) & CRL.M.A.****19712/2023 (extension of interim suspension of sentence)**

1. By way of the instant application under Section 389(1) of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the appellant seeks suspension of sentence awarded to him during the pendency of the



present appeal.

2. The above-captioned appeal as well as the present application seeking suspension of sentence is an off-shot of judgment dated 04.03.2020 and order on sentence dated 13.03.2020, passed in Sessions Case No. 446/2019 and 449/2019, arising out of FIR No. 89/2018 and 90/2018, registered at Police Station Makhi, Unnao, Uttar Pradesh, by the learned District and Sessions (West), Tis Hazari Courts, Delhi.

3. The appellant herein was convicted and sentenced as under:

- i. Section 120B of IPC: Five years rigorous imprisonment and fine of Rs. 1,00,000/-, and in case of non-payment of fine, further imprisonment for one year.
- ii. Section 193 of IPC: Seven years rigorous imprisonment and fine of Rs. 50,000/-, and in case of non-payment of fine, further rigorous imprisonment for eighteen months.
- iii. Section 201 of IPC: Two years rigorous imprisonment and fine of Rs. 10,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.
- iv. Section 203 of IPC: Two years rigorous imprisonment and fine of Rs. 10,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.
- v. Section 211 of IPC: Seven years rigorous imprisonment and fine of Rs. 50,000/-, and in case of non-payment of fine, further rigorous imprisonment for eighteen months.



- vi. Section 323 of IPC: One year rigorous imprisonment and fine of Rs.1,000/-, and in case of non-payment of fine, further rigorous imprisonment for three months.
- vii. Section 341 of IPC: One-month rigorous imprisonment and fine of Rs.500/, and in case of non-payment of fine, further rigorous imprisonment for seven days.
- viii. Section 304 Part-II of IPC: Ten years rigorous imprisonment and fine of Rs. 10,00,000/- to be paid to the heirs of the deceased/victim.
- ix. Section 3 read with 25 of Arms Act: Three years rigorous imprisonment and fine of Rs. 25,000/-, and in case of non-payment of fine, further rigorous imprisonment for six months.

4. Learned Senior Counsel for the appellant argues that the appellant herein was diagnosed with oral cancer during his custody and pursuant to order dated 15.10.2020 passed by this Court, he was admitted in AIIMS, New Delhi on 19.10.2020 for his operation for oral cancer, which was performed on 26.10.2020. Thereafter, the appellant had remained under observation and supervision of doctors at AIIMS, till 09.11.2020, after which he was again shifted to Jail. It is further stated that *vide* order dated 12.11.2020, this Court was pleased to grant interim bail to the appellant for period of 8 weeks after considering his medical conditions and further course of treatment required by him, and since then, the said interim bail was extended from time to time, till 18.01.2023, when this Court had



declined to extend the same. It is submitted that as directed by this Court, the appellant had surrendered before the Jail authorities on 24.01.2023. It is stated that during the interim suspension of the appellant's sentence, he had developed Dystonic Tremor, and further, he was not being given proper medical care in the prison and that the physiotherapy facilities as required by the appellant were not available in the prison. It is further submitted that *vide* order dated 02.06.2023, this Court had again suspended the sentence of the appellant considering his fragile medical condition, as interim measure, for a period of 8 weeks, which was also extended and he continues to be out of the prison till now. Learned Senior Counsel further contends that sentence of five co-accused persons have already been suspended by this Court and the present application deserves to be allowed on the ground of parity. It is further submitted that appellant has already remained in custody for a period of three years, out of total sentence of ten years, and has also deposited the fine which was imposed on him by the learned Trial Court. It is also argued that the appellant had not misused the liberty when he was granted interim bail by this Court owing to his poor medical condition and there are no chances of him absconding or fleeing away from justice. Therefore, in light of these circumstances, learned Senior Counsel prays that the sentence of the appellant be suspended during the pendency of the appeal.

5. Learned Special Counsel for the CBI, on the other hand, argues that the appellant herein cannot seek suspension of sentence on the ground of parity since the other co-accused, whose sentence have



been suspended, had already served more than half of the total sentence awarded to them, whereas the appellant herein has served only about 30% of his sentence i.e. three years out of ten years. It is also argued that this Court had called for a medical status report of the appellant from AIIMS, New Delhi and the report dated 30.10.2023 clearly opines that the appellant is fit to serve his sentence inside the jail, and thus, the grounds raised *qua* the medical condition of the appellant, for seeking suspension of his sentence, are without any merit. Learned Special Counsel further contends that the appellant herein was one of the masterminds in orchestrating the crime in question and para 206 and 210 of the impugned judgment records the role of the appellant in the present case. Therefore, it is prayed that considering the medical report of the AIIMS, absence of ground of parity and seriousness of the offence committed by the appellant, the present application be dismissed.

6. Learned counsel for the victim, while assisting the learned Special Counsel for CBI in opposing the present application, submits that the victim herein and his family have been provided with security by the Hon'ble Apex Court since they apprehend constant threats from the accused persons including the appellant herein. It is stated that the offence committed by the appellant herein, in the given facts and circumstances, is very grave in nature and since an application for further evidence in appeal is also pending in one of the appeals filed in the same case, this application ought to be dismissed.

7. This Court has heard arguments addressed before it on behalf



of the accused as well as State and the victim, and has gone through the material placed on record.

8. Since the appellant seeks suspension of sentence awarded to him by the learned Trial Court, during the pendency of present appeal, it will be appropriate to give a brief overview of the law on point. In this regard, Section 389 of Cr.P.C. reads as under:

“**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...”

(emphasis supplied)

9. In *Omprakash Sahni v. Jai Shankar Chaudhary* (2023) 6 SCC 123, the Hon’ble Apex Court has explained the meaning of suspension of sentence as well as the intent and idea behind incorporation of this provision. The relevant observations are extracted hereunder:

“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 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.

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.

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.

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 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.”**

(emphasis supplied)

10. In the present case, the appellant herein has been awarded a maximum sentence of ten years and thus, his case would fall within the ambit of first proviso to Section 389(1) of Cr.P.C.

11. The Hon'ble Apex Court, in case of *Atul Tripathi v. State of Uttar Pradesh* (2014) 9 SCC 177, had explained the legal position as well as the factors that Courts must keep in mind while deciding applications for suspension of sentence in cases falling in category where punishment awarded to the convict is ten years or more. The relevant observations in this regard read as under:

“15. To sum up the legal position:

15.1. The appellate court, **if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the Public Prosecutor** to show cause in writing against such release.

15.2. On such opportunity being given, the State is required to file its objections, if any, in writing.





15.3. In case the Public Prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court.

15.4. The **court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court**, etc. before passing an order for release.”

(Emphasis supplied)

12. In *Saudan Singh v. State of U.P. 2021 SCC OnLine SC 3259*, the Hon’ble Apex Court had propounded one broad parameter while considering applications for suspension of sentence in cases other than those involving life sentence, and held as under:

“7. We may note that there may be even convicts in custody in cases other than life sentence cases and in those cases again **the broad parameter of 50 per cent of the actual sentence undergone can be the basis** for grant of bail.”

(Emphasis supplied)

13. In light of the above-captured position of law, this Court proceeds to examine the grounds raised in the present application and as argued by learned Senior Counsel while praying for grant of suspension of sentence and as opposed by the respondents.

14. The primary ground raised and argued on behalf of appellant in this application is that the medical condition of the appellant is such that he cannot serve his sentence in the jail and he must be released from judicial custody.

15. In the present case, this Court *vide* order dated 17.10.2023 had



directed AIIMS, New Delhi to constitute a Medical Board to examine the appellant and inform this Court as to whether he is in a condition to serve his sentence in jail, being assisted by the medical facilities available in the jail, and whether he can consume food without assistance. The relevant portion of order dated 17.10.2023 reads as under:

“6. This Court notes that pursuant to the filing of the present application, the applicant was granted interim suspension of sentence by this Court vide order dated 18.01.2023. In view of the medical condition of the applicant, this Court directs the superintendent of All India Institute of Medical Science, Delhi to constitute a Medical board to examine the applicant and to inform this Court as to whether the applicant can serve the sentence being assisted by the medical facility available to him in Tihar Jail, and whether he will be able to consume food without assistance. The applicant is directed to appear before the medical board on 30.10.2023, and the report of the concerned medical board will be submitted to this Court on 29.11.2023.”

16. The appellant herein was examined by the Medical Board at AIIMS, New Delhi on 31.10.2023, and the Medical Board, by way of report dated 31.10.2023, has opined as under:

“...The meeting of the Medical board was held on 30.10.2023 (Monday) at 03:00 P.M. in Consultation Room No.13, M.S. Office Wing, Ground floor, AIIMS, New Delhi. All members were present. Appellant Mr. Jaideep Singh Sengar @ Atul Singh appeared before the multidisciplinary Medical Board of Experts with his medical records. Based on the history elicited, perusal of the available medical records, and clinical examination of Mr. Jaideep Singh Sengar @ Atul Singh, the opinion of the Medical Board with respect to the specific questions asked by Hon'ble Court is as follows:



a. Whether the applicant can serve the sentence being assisted by the medical facility available to him in Tihar Jail

The applicant/appellant Mr. Jaideep Singh Senger@ Atul Singh exhibits movements of the upper limbs which are distractable, variable and entrainable, which mean that the movements are functional in nature. The movements are exaggerated on being observed (with an element of secondary gain). Moreover records of the last examination show movements of the neck as well, which have resolved during the current examination, which strongly suggests the non organic and functional nature of the movements, and hence are not disabling or needing assistance for any activity of daily living.

b. Whether he will be able to consume food without assistance

Yes, he will be able to consume food without assistance...”

17. A perusal of the aforesaid report reveals that the Medical Board constituted at AIIMS, after examining the appellant herein, has given a categorical opinion that movements of the upper limbs and neck of appellant are functional in nature, and thus, he does not require any assistance in his day-to-day activities. The Board has further opined that appellant will be able to consume food without any assistance.

18. Therefore, this Court is of the opinion that the medical report is clear on point that medical condition of the appellant is not of a nature that he cannot serve the sentence awarded to him, in the jail.

19. As regards the second contention of the appellant i.e. ground of parity, this Court has perused and examined the orders of co-accused persons. The sentence of co-accused persons Ashok Singh Bhadauria and Kamta Prasad Singh was suspended by the learned Predecessor



of this Bench vide judgment dated 22.09.2023 on the ground this Court had not been able to hear the main appeal for three years and these appellants had undergone almost half of their sentence. The relevant portion of the judgment reads as under:

“74. At this stage, keeping in mind, the pendency of cases on sentence already undergone by the accused persons, it is a matter of the record that an appeal in the case was admitted on 31.07.2020 however, the Court is not been able to hear it. It is also a matter of the record that the appellants did not misuse the liberty of interim bail granted to them from time to time. As per Nominal Roll, appellant no. 1 in the present case had undergone for sentence of four years eight months and seven days approximately, and Appellant no. 2 has undergone four years five months and 28 days approximately and the unexpired portion is four years and nine months approximately.

75. In the facts and circumstances, and in view of the incarceration, both the appellants“ Ashok Singh Bhadauria and Kamta Prasad Singh are admitted to Court bail on furnishing a personal bond of Rs.50,000/- with one surety each of the like amount to the satisfaction of the trial court, subject to the following conditions...”

20. Further, co-accused persons Vineet Mishra and Birendra @ Bauwa were enlarged on bail during the pendency of their appeals, *vide* orders dated 17.10.2023 by this Court, as they had undergone a period of about five years and four months i.e. more than half of the total sentence awarded to them. Similarly, the sentence of co-accused Shashi Pratap Singh was suspended *vide* order dated 17.10.2023 as he had remained in judicial custody for a period of about four years and eight months.

21. The appellant herein has remained in judicial custody for a period of about three years, which is much lower than the half of total



sentence awarded to the appellant i.e. rigorous imprisonment for ten years. Thus, the present appellant cannot also seek any relief on the ground of parity.

22. This Court has also gone through the contents of the impugned judgment *vide* which the appellant herein was convicted. Though detailed appreciation of the findings recorded in the impugned judgment is not required while deciding the present application, this Court however deems it crucial to highlight the role of the appellant in the commission of offence in present case.

23. The background of present case is that on 04.06.2017, the minor daughter of the victim in this case was enticed on the pretext of getting a job and was taken to the house of Kuldeep Singh Senger i.e. the brother of present applicant, where she was raped by Kuldeep Singh Senger, for which he stands convicted under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 376 of IPC *vide* judgment dated 16.12.2019 and *vide* order dated 20.12.2019, he has been sentenced to undergo imprisonment for life. On 03.04.2018, the family of the minor rape victim had travelled to Unnao for a court hearing when her father, Surendra i.e. victim herein was brutally assaulted by the accused persons in broad daylight, under the patronage of present applicant. The very next day, the police had arrested the victim Surendra on allegations of being in illegal possession of arms and he had ultimately succumbed to multiple injuries suffered by him, in police custody on 09.04.2018.

24. Trial of five cases arising out of aforesaid incidents, including the present case, were transferred from Uttar Pradesh to Delhi, by the



Hon'ble Apex Court *vide* order dated 01.08.2019 passed in *Suo Motu Writ Petition (Criminal) 01/2019 with Transfer Petition (Criminal) Nos. 242-245/2019*, and the trial was directed to be concluded within a period of 45 days.

25. The impugned judgment records that as soon as the victim in this case was seen in the village and he had some initial skirmishes with co-accused Shashi Pratap Singh, he had called other accused persons and had informed the present applicant Jaideep Singh Senger about the scuffle between him and the victim and this information was then conveyed to co-accused Kuldeep Singh Senger and under the patronage of present applicant and his brother, the other accused persons in this case had assaulted the victim with the barrel of a rifle. It has also been proved by the prosecution during the course of trial that one of the co-accused had taken away the licensed rifle of present applicant Jaideep Singh Senger from his vehicle and the present applicant had allowed him to use his rifle for the purpose of hitting and assaulting the victim in this case. It was also proved before the learned Trial Court that conversations between the present applicant and PW-48 clearly indicated that the victim was beaten up under the patronage of present applicant, who had the support of his brother Kuldeep Singh Senger. It has also been held that the present applicant was enjoying the sadistic pleasure of thrashing the victim by his goons while parading him throughout the village. Thus, the present applicant has been held to be the person under whose guidance and patronage, the offence in this case was committed, which had led to the death of victim.



26. *Vide* order dated 01.08.2019 as noted above, the Hon'ble Apex Court had also ordered that protection be provided to the minor rape victim as well as her lawyer, mother and other immediate family members by C.R.P.F. The security of the said persons as provided by C.R.P.F. has not been withdrawn till date as submitted at bar by the learned counsel for the complainant.

27. To sum up, the present case revolves around the attempt on part of accused persons and the present applicant Jaideep Singh Senger to brutally assault the father of a minor rape victim, leading to his unfortunate death, who had dared to raise his voice against Kuldeep Singh Senger, who was an MLA from Bangarmau, Unnao, Uttar Pradesh.

28. In view of the foregoing discussion, when this Court applies the principles enumerated by the Hon'ble Apex Court in cases of ***Omprakash Sahni*** (*supra*) and ***Saudan Singh*** (*supra*), and takes into account the period of custody undergone by the appellant, his medical condition, the severity and gravity of the offence committed by him and the impact of public confidence in Courts for the purpose of deciding his application for suspension of sentence, this Court finds no merit in it and is not inclined to allow the same at this stage.

29. As far as the argument of learned counsel for appellant that the appeal will take time to be heard is concerned, this Court will take up the case for hearing in near future i.e. on 03.05.2024.

30. Accordingly, the present application stands dismissed.

31. It is, however, clarified that nothing expressed hereinabove shall be construed as opinion of this Court on the merits of the case.



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32. List on 03.05.2024.
33. Registry is directed to list the connected appeals of co-accused persons, which are in the category of 'regulars', alongwith the present appeal on 03.05.2024.
34. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JANUARY 24, 2024/ns**