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Newsletter

EDITION #2

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SUSPENSION OF SENTENCE IN SERIOUS OFFENCE IS AN EXCEPTION AND NOT A RULE

The Supreme Court, in its recent case, *Shivani Tyagi versus State of U.P. & Anr. 2024 SC 333*, observed that the mere factum of sufferance of incarceration in a case where life imprisonment is imposed, cannot be a reason for invoking power under Section 389 of CrPC without referring to the relevant factors.

BACKGROUND OF THE CASE:

a) The victim was left permanently disfigured after suffering terrible injuries, including deep burns, as a consequence of a vicious acid attack.
b) The accused were convicted under Sections 307/149 and 326A/149 of Indian Penal Code (for short '**IPC**').
c) An appeal was filed against suspension of sentence granted to the convict under Section 389 of CrPC.

ISSUE:
a) Whether the court correctly suspended the convict's sentence in accordance with Section 389 of the CrPC?
b) Whether the court gave sufficient weight to the seriousness of crime and the other pertinent considerations before granting the convicted parties bail?

COURT ANALYSIS AND JUDGMENT:

a) The Supreme Court in the instant case emphasized the need for comprehensive and objective assessment of important factors when deciding the plea under Section 389 of the Cr.P.C.

b) The Court emphasised that suspension of conviction wherein conviction is with regards to the serious offences, rejection of sentence should be a normal rule and suspension be an exception.

c) The court's decision setup a precedent by emphasising that, in circumstances of serious acts, particularly those that result in permanent disfigurement like acid attacks, the suspension of punishment should be the exception rather than the rule. This demonstrates the court's determination to prevent financial settlements from demeaning severe crimes like acid attacks.

d) The instant case states that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC.

OUTCOME OF THE CASE:

a) The Appeals filed by the victim, were allowed, leading to the setting aside of the impugned order granting suspension of sentence and bail to the accused.

CONCLUSION:

a) The verdict establishes a crucial legal precedent that will influence how serious crimes such as acid attacks are handled in India going forward.
b) It underlines the need for careful legal analysis and the evaluation of the gravity of the offence and its effect on the victim when determining whether to suspend sentences or grant bail.

SUSPENSION OF SENTENCE UNDER SECTION 389 CRPC

As per Section 389 of the Criminal Procedure Code (for short 'CrPC'), a convict facing a sentence may have it suspended for legitimate reasons if he files an appeal with the appellate court.

However, these appellate courts must document the reasons in writing prior to the suspension. But before passing of such suspension order, the court shall give opportunity to the Public Prosecutor for showing cause in writing against such release. If the criminal is detained, he may be freed on bond or under bail.

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2024 INSC 343

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.1957-1961 of 2024
(Arising out of SLP(Crl.) Nos.3484-3488 of 2024)

Shivani Tyagi **Appellant(s)**

Versus

State of U.P. & Anr. **Respondent(s)**

O R D E R

Leave granted.

1. In these quintuplet appeals the victim of an acid attack assails the suspension of sentence of life imprisonment of the convicted persons, the private respondents and their consequential enlargement on bail.

2. Heard learned counsel appearing for the self-same appellant-victim in the captioned appeal, learned counsel appearing for the common first respondent-

State of Uttar Pradesh and learned counsel appearing for the private respondents.

3. Section 389 of the Code of Criminal Procedure (for short the "Cr.PC") deals with the suspension of execution of sentence pending the appeal against conviction and release of appellant(s) on bail. The said provision mandates for recording of reasons in writing leading to the conclusion that the convicts are entitled to get suspension of sentence and consequential release on bail. The said requirement thus indicates the legislative intention that the appellate Court invoking the power under Section 389, Cr. PC, should assess the matter objectively and that such assessment should reflect in the order.

4. We will briefly refer to some of the relevant decisions dealing with Section 389, Cr. PC. In the case of short-term imprisonment for conviction of an offence, suspension of sentence is the normal rule and its

rejection is the exception. (See the decision in ***Bhagwan Rama Shinde Gosai & Ors. v. State of Gujarat***[1]**).** However, we are of the considered view that the position should be vice-versa in the case of conviction for serious offences when invocation of power under Section 389 is invited. This Court, in the decision in ***Kishori Lal v. Rupa & Ors.***[2]*,* held in paragraphs 4 and 5 thus:-

> *"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*

[1] (1999) 4 SCC 421
[2] (2004) 7 SCC 638

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 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-respondents were on bail."

5. In the decision in ***Anwari Begum v. Sher Mohammad & Anr.***[3] this Court in paragraphs 7 and 8 held thus:-

"7. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though a detailed examination of the evidence

[3] (2005) 7 SCC 326

and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

8. There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the Court in

support of the charge.

Any order dehors of such reasons suffers from non-application of mind as was noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598, Puran v. Rambilas (2001) 6 SCC 338 and in Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528."

6. After referring to the aforesaid paragraphs in the decisions in ***Kishori Las's*** case (supra) and ***Anwari Begum's*** case (supra), this Court in the decision in ***Khilari v. State of Uttar Pradesh & Ors.***[4] interfered with an order suspending the sentence and granting bail for non-application of mind and non-consideration of the relevant aspects.

7. Applying the principles and parameters for invocation of the power under Section 389. Cr. PC, revealed from the decisions, as above, we will have to consider the sustainability of the challenge against the impugned orders by the appellant victim. In that

[4] (2009) 4 SCC 23

regard a succinct narration of the facts involved in the case, strictly confining to the requirement for consideration of these appeals, is required. The private respondents in the appeals, five in numbers, were convicted finding guilty of offences, including under Sections 307/149 and 326A/149, IPC. The appellant-victim was then aged about 31 years and, in the incident, she suffered attack with sulfuric acid and her body was burnt 30 to 40 percent. PW-6, Dr. Uttam Jain with Ext.A5, would reveal that she suffered deep burn on the face, chest and both hands and injuries on her were grievous in nature.

8. We may hasten to add that regarding the merits of the appeals by the party respondents against their conviction, we shall not be understood to have held or made any observation as it is a matter to be considered on its own merits in the pending appeals.

9. We have already referred to the mandate under

Section 389 Cr.PC that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in ***State of Haryana v. Hasmat***[5], this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC. It is also

[5] (2004) 6 SCC 175

relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.PC without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. PC, likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative

intention as can be seen from the phraseology in Section 389 Cr.PC. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.

10. Having observed and held as above, we are deeply peeved on perusing the impugned judgment,

for the same reflects only non-application of mind and non-consideration of the relevant factors despite the fact that the case involved an acid attack on a young woman resulting into permanent disfiguration. In the case on hand, a scanning of the impugned order would reveal that what mainly weighed with the Court is the offer made on behalf of the convicts that they would give a payment of Rs. 25 lakhs through demand drafts, taking into account the evidence that the victim had incurred an amount of Rs. 21 lakhs for her treatment. Paragraph 10 of the impugned order would reveal that taking note of the said offer besides the period of incarceration and also the delay likely to occur in the consideration of appeal, sentence imposed was suspended and the private respondents were enlarged on bail. Paragraph 10 of the order would reveal this position and it reads thus:-

"10. After hearing counsel for the parties and considering the voluntarily offer made by the appellants, which is without prejudice to the right of defence as well as right of the prosecution to be decided at the time of final adjudication and having no bearing on the merit of the case, over and above, the amount of compensation being paid by the District Legal Services Authority, Meerut, the appellants have offered to pay an amount of Rs. 25 lacs to the victim for her medical treatment and also in view of the long custody as well as the antecedents of the appellants and also considering the fact that the appeals pertain to the year 2021 and are not likely to be listed for final argument in near future, we deem it appropriate to grant suspension of sentence of the appellants."

11. We have no hesitation to hold that the impugned order is infected with non-application of mind and non-consideration of the relevant factors required for invocation of power under Section 389 in the light of the settled position of law. An acid attack may completely strip off the victim of her basic human right to live a

decent human life owing to permanent disfiguration. We have no hesitation to hold that in appeals involving such serious offence(s), serious consideration of all parameters should be made. Even a cursory glance of the impugned order would reveal the consideration thereunder was made ineptly. The serious nature of the offence involved was not taken into account besides the other relevant parameters for the exercise of power under Section 389, Cr. PC.

12. In such circumstances, the impugned judgment cannot be sustained. The upshot of the discussion is that the order suspending the sentence of the private respondents and enlarging them on bail, invite interference. Consequently, the impugned order is set aside and consequently the bail granted to the private respondent in all these appeals stands cancelled. Consequently, the appellants shall surrender before the trial Court for the purpose of their committal to judicial

custody. This shall be done within a period of four days. In case of their failure to surrender as ordered, the private respondents who are convicts shall be re-arrested and committed to custody.

13. The Appeals are allowed as above.

.....J.
(C.T. Ravikumar)

New Delhi;
April 05, 2024