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

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Pronounced on: 19.01.2026

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CRL.A. 539/2020**KULDEEP SINGH SENGAR**

Through:

.....Appellant

Mr. Manish Vashisht, Sr. Adv.
with Ms. Aishwarya Sengar,
Mr. Vedansh Vashisht, Mr.
Swapan Singhal, Mr. Kanhaiya
Singhal, Ms. Avantika Shankar
and Ms. Shatakshi Singh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondentThrough: Ms. Anubha Bhardwaj, SPP for
CBI with Ms. Ananya
Shamshery, Adv.Mr. Mehmood Parcha, Mr.
Kshitij Singh, Mr. Kumail
Abbas, Advs. for victim.**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.****CRL.M.(BAIL) 2050/2024 (seeking suspension of sentence)**

1. The present application is filed under Section 430 read with Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 [“BNSS”] read with Section 389(3) of the Code of Criminal Procedure, 1973 [“Cr.P.C.”] by the appellant seeking suspension of sentence and release on bail during the pendency of Criminal Appeal No.539/2020



against the Judgment and Order passed by Ld. District and Sessions Judge, West, Tis Hazari Courts, Delhi [“**trial court**”].

Factual background

2. Prosecution case, briefly stated, is that on 04th June, 2017, the minor daughter of Surender Singh @ Pappu Singh was enticed and taken to house of the appellant Kuldeep Singh Senger on the false pretext of getting a job where she was raped by him. Thereafter, on 03rd April, 2018, Surender Singh @ Pappu Singh and his co-worker Kishore were travelling to Unnao for the hearing of the rape case of his minor daughter, where they were allegedly brutally assaulted by the accused persons in broad daylight in village Makhi, Unnao. Subsequently, FIR No. 89/2018 was registered on a complaint by Shailendra @ Tinku Singh, asserting that Surender Singh @ Pappu was apprehended with a country-made pistol and four cartridges. Surender Singh @ Pappu Singh was arrested in case FIR No. 89/2018, on allegation of being in possession of illegal arms and he ultimately succumbed to multiple injuries suffered by him, while being in judicial custody. On the following day, FIR No. 90/2018 was registered on the complaint of PW-42 i.e. wife of the deceased, alleging that the appellant and his associates had assaulted the deceased and attempted to molest her minor daughters, and had exerted political pressure to shield the assailants.

3. Both FIRs were transferred to the Central Bureau of Investigation [CBI], which re-registered them as RC No. 9(S)/2018



and RC No. 10(S)/2018. The CBI conducted an extensive investigation, recorded statements of several independent witnesses and analyzed call-detail records. Upon completion of investigation, detailed charge-sheet was filed by CBI in the trial court.

4. The trial court after completion of trial proceedings, vide Judgment dated 04th March, 2020, convicted the appellant for offences under Sections 166/167/193/201/203/21//218/323/341/304/120B IPC and Sections 3/25 of the Arms Act, 1959. Furthermore, vide Order dated 13th March, 2020, the appellant was 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 compensation 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 nonpayment of fine, further rigorous imprisonment for six months.

All the sentences shall run concurrently.”

5. The appellant preferred Criminal Appeal bearing no. 539/2020 against the Judgement and Order passed by the Ld. Trial court, which is stated to be pending before this Court. He has filed the present application seeking suspension of his sentence and release on bail during the pendency of appeal preferred by him.

Submissions on behalf of the Appellant

6. Mr. Vashisht, learned Senior Counsel for the appellant submitted that the appellant has remained in custody since 13th April, 2018, and during this entire period, there has not been a single adverse report or complaint regarding his conduct, either from the jail authorities or from any other agency. Learned Senior Counsel drew the attention of this Court to the Nominal Roll of the appellant to submit that out of the total awarded sentence of 10 years, the appellant has already undergone approximately 7.5 years of incarceration i.e. more than half of his sentence. It was further contended that the appellant was granted interim bail on four occasions and, on each such occasion, he adhered to the conditions imposed by the Court and did not misuse the liberty granted to him in any manner.

7. Addressing the issue of security and threat apprehension, learned Senior Counsel submitted that there is no finding by any Court to the effect that the appellant has in any manner threatened the victim



or the family members. It was argued that the prosecution has failed to place on record any material to suggest that the release of the appellant would pose any threat to the victim or witnesses. It was further pointed out that during the course of arguments, the CBI did not contend that there exists any threat perception if the sentence of the appellant is suspended and hence, the absence of such an assertion by the prosecution indicates that the apprehension of threat is unfounded and speculative.

8. Lastly, learned Senior counsel submitted that the appeal is not likely to be heard in the near future, and continued incarceration of the appellant, despite having undergone a substantial portion of the sentence, would cause grave and irreparable prejudice and that the appeal may become infructuous. In view of the period already undergone, the satisfactory conduct of the appellant and absence of any security concerns, it was prayed that the sentence of the appellant be suspended during the pendency of the appeal and he be released on bail.

Submissions on behalf of State and Counsel on behalf of victim

9. *Per contra*, Learned Special Public Prosecutor for the CBI opposed the application for suspension of sentence and submitted that the appellant was a central and pivotal figure in the commission of the offence, and he was convicted by the Trial Court after proper appreciation of evidence.

10. Mr. Mehmood Pracha, Ld. Counsel appearing on behalf of the victim submitted that the appellant stands convicted not only for the



offences arising from the present incident but also for the offence of rape of a minor girl victim punishable under Section 376 IPC and Sections 5(c)/6 of POCSO Act in a connected FIR, and the deceased in the present case was the father of the victim and a witness in that rape prosecution.

11. Mr. Pracha submitted that the present case is a direct and brutal offshoot of the rape case in which he has already been convicted. It was submitted that the appellant's earlier application for suspension of sentence was dismissed by Coordinate bench of this Court vide judgment dated 07th June, 2024 after detailed appreciation of evidence, and no new circumstance has since arisen to warrant reconsideration.

12. It was submitted that the appellant's political influence and stature create a real and substantive apprehension of interference with witnesses and the administration of justice, should he be released on bail. It was additionally pointed out that the applications have been moved before the Supreme Court to remove the CRPF security granted to the victim and her family. Mr. Pracha, Ld. counsel further drew attention of this Court towards the findings of the Coordinate bench of this Court while dismissing the application for suspension of sentence regarding gravity of offence, nature of crime committed and its societal impact, and submitted that these findings cannot be lightly disregarded at the stage of suspension.

13. It was contended that at the stage of deciding application for suspension of sentence, the Court must confine itself to examining whether the conviction is *prima facie* sustainable, and not re-assess the



evidence. In view of the seriousness of the offences, the potential risks associated with release and existence of no new circumstances, it is submitted that the application for suspension of sentence be dismissed.

Analysis and Reasoning

14. I have considered the rival submissions and perused the material on record.

15. It is trite that suspension of sentence under Section 389 Cr.P.C. is not a matter of right and the nature and gravity of the offence committed are vital considerations for deciding such application. The power to suspend execution of sentence under Section 389 Cr.P.C. is discretionary and must be exercised after applying judicial mind to the relevant circumstances.

16. In the present case, the trial court after detailed appreciation of evidence reached the conclusion that the appellant was a key participant in the conspiracy and that the assault on the deceased, and the subsequent falsification of FIR, were part of that design. Those findings form the basis of the conviction of the appellant and cannot be set aside lightly at the stage of deciding application for suspension of sentence.

17. The Supreme Court in *Omprakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123*, held that once a conviction is recorded, the presumption of innocence stands dissolved, and the principles governing pre-conviction bail cannot be mechanically applied to post-conviction suspension. Section 389 thus envisages a distinct and more restrictive standard, requiring the Court to consider



the *prima facie* sustainability of the conviction, the gravity of the offence, and other relevant factors.

18. In the present case, the appellant has been awarded a maximum sentence of ten years for offences including Section 304 Part II IPC (culpable homicide not amounting to murder). The offence committed is of grave magnitude and has a deep societal impact.

19. The legal principles governing suspension of sentence in cases where the punishment is ten years or more were summarized by the Hon'ble Supreme Court in *Atul Tripathi v. State of U.P.*, (2014) 9 SCC 177. The judgment mandates that before considering release, the Court must examine the gravity of the offence, nature of evidence, antecedents of the convict, impact on public confidence, and the submissions of the Public Prosecutor. These factors, when applied to the facts, weigh heavily against grant of suspension.

20. Turning to the facts, this Court notes the background of the matter. The minor daughter of the victim was subjected to rape on 04th June, 2017, in respect of which the appellant stands convicted under Sections 5 and 6 of the POCSO Act read with Section 376 IPC and has been sentenced to imprisonment for the remainder of his natural life. On 03.04.2018, when the family of the minor rape victim travelled to Unnao for court proceedings, her father, the victim herein, was brutally assaulted in broad daylight and later falsely implicated in a fabricated FIR alleging possession of illegal arms. He succumbed to his injuries on 09th April, 2018 while in judicial custody.



21. The Supreme Court, in exercise of its extraordinary jurisdiction, transferred all trials arising out of these incidents from Uttar Pradesh to Delhi vide order dated 01st August, 2019 passed in *Suo Motu Writ Petition (Criminal) 01/2019 with Transfer Petition (Criminal) Nos. 242-245/2019*, also directing that the victim, her family members, and their lawyer be provided CRPF protection. This protection continues to this day. These directions reflect the gravity of the threat perception, a factor that remains relevant even at the stage of deciding suspension of sentence.

22. Similar application for suspension, preferred by the appellant, has been dismissed by the Coordinate Bench of this Court vide judgment dated 07th June, 2024 after due consideration of the arguments of the appellant on merits. None of the grounds, on which the Judgment of Conviction has been assailed, were pressed by the learned Senior Counsel for the appellant while making submissions, except the ground of prolonged incarceration. Nevertheless, such submissions were already dealt with by the previous Roster Bench while rejecting the application of suspension of sentence of the appellant. Appellant has not pointed out any *prima facie* palpable error in the judgment of the Trial Court.

23. The Supreme Court in *Shivani Tyagi v. State of U.P. & Anr.*, 2024 SCC OnLine SC 842 held that the sentence cannot be suspended merely on the ground of incarceration or delay in appeal process, but the same has to be decided on its own merits. The relevant portion of the judgment reads as under:-



“9. 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. P.C. It is also 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. P.C. 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. P.C., 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. P.C. 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.”

24. It is also noteworthy that the appellant has criminal antecedents inasmuch as he been convicted in a connected case for the rape of a minor and sentenced to undergo life imprisonment. The existence of such serious antecedents is a significant consideration and militates strongly against suspension.



25. All these aspects have been already appreciated by the Coordinate bench of this Court while rejecting the application of appellant seeking suspension of sentence vide order dated 07th June, 2024. Since then, there has been no change in circumstance apart from passage of time. Prolonged incarceration by itself cannot be a standalone ground for grant of suspension of sentence, particularly where no new circumstance has arisen subsequent to the earlier rejection of suspension.

26. Having been convicted, the presumption of innocence is no more available to the appellant. No exceptional or compelling circumstance has been brought to the fore that would warrant suspension of sentence at this stage. The argument that the appellant has undergone approximately 7.5 years of total imprisonment of 10 years RI awarded to him also does not advance his case. The period undergone is relevant but not determinative. When weighed against the gravity of the crime, the threat perception, the appellant's antecedents, and the nature of the Trial Court's findings, this factor alone cannot warrant suspension. The appellant will, of course, be entitled to fully contest these findings at the stage of final hearing of the appeal.

27. The Court is conscious that the appellant has suffered long incarceration of about 7.5 years and the appeal could not be heard since after the dismissal of the previous application but reason for such delay in hearing the appeals partly was that appellant filed multiple applications for interim suspension, extension of bail and



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regular suspension of sentence. The purpose would be served if the appeal be heard on merits in an expeditious manner.

28. In totality of facts and after considering the statutory framework, the judicial principles governing suspension, the antecedents of the appellant and the absence of any new circumstance that has emerged since the prior rejection of suspension application, this Court finds no ground to grant relief.

29. Accordingly, the present application seeking suspension of sentence is dismissed.

30. Nothing stated herein shall be construed as an expression of opinion on the merits of the appeal, which shall be adjudicated independently.

31. A copy of the same be sent to the Jail Superintendent for necessary information and compliance.

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32. List along with connected appeals before the Roster Bench on 03rd February, 2026 for hearing.

प्रदर्शनकाल दायरा

RAVINDER DUDEJA, J.

19 JANUARY, 2026/AK