2026 INSC 349

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1864 OF 2026
[Arising out of SLP (Crl.) No. 4241 of 2025]

DHAN JEE PANDEY … APPELLANT(S)

VERSUS

THE STATE OF BIHAR & ANOTHER … RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1865 OF 2026
[Arising out of SLP (Crl.) No. 12906 of 2025]

J U D G M E N T

R. MAHADEVAN, J.

Leave granted in both the cases.

Criminal Appeal No.1864/2026 @ SLP (Crl.) No. 4241 of 2025

2. The instant Criminal Appeal has been filed by the appellant / informant challenging the judgment and order dated 22.11.2024 passed by the High Court of Judicature at Patna[1] in Criminal Appeal (DB) No. 1180 of 2018, whereby, the High Court, during the pendency of the appeal, suspended the sentence of life

[1] Hereinafter referred to as "the High Court"

imprisonment awarded to Respondent No. 2, Shekhar Pandey @ Shekhar Suman Pandey @ Sintu Pandey @ Situ and released him on bail.

3. The prosecution case, in brief, is that on the basis of the written information (*fardbayan*) of the appellant / informant, namely Dhan Jee Pandey, P. S. Case No. Buxar (I) 4 of 2016 dated 04.01.2016 was registered under Sections 302, 307, 120B and 34 of the Indian Penal Code, 1860[2] and Section 27 of the Arms Act, 1959 against Respondent No. 2 and other accused persons. It is alleged that on 04.01.2016 at about 04.15 p.m., the appellant, along with his elder brother (deceased), Ramashankar Pandey @ Jhamman Pandey, was proceeding towards his village on a motorcycle. On the way, they stopped at a betel shop located at the village chatti. At that time, the appellant's father-in-law, Mukteshwar Mishra, also arrived and engaged in conversation with the appellant at a short distance from the shop. In the meantime, Respondent No. 2 along with other accused persons reached the spot and began abusing the deceased. Immediately thereafter, two accused persons, namely Shiv Jee Pandey and Ghanshyam Pandey, caught hold of the deceased, while the others took out firearms. Shiv Jee Pandey then fired a gunshot at the head of the deceased, causing fatal injuries. The other accused persons also fired at the appellant, who narrowly escaped. Thereafter, all the accused fled the scene on motorcycles. The deceased succumbed to the injuries and died on the spot.

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[2] For short, "IPC"

4. After trial, the Court of the Additional District Judge II-cum-Special Judge (Excise), Buxar[3], by judgment dated 18.08.2018 in S.T.R. No. 265 of 2016, convicted Respondent No. 2 along with other accused persons for offences punishable under Sections 302, 307 read with Section 34 IPC and Section 27(3) of the Arms Act. By order dated 23.08.2018, he was sentenced to imprisonment for life along with fine under Section 302/34 IPC; rigorous imprisonment for ten years under Section 307/34 IPC; and life imprisonment under Section 27(3) of the Arms Act.

5. Aggrieved thereby, Respondent No. 2 preferred Criminal Appeal (DB) No. 1180 of 2018 before the High Court. During the pendency of the appeal, the High Court, by the impugned order dated 22.11.2024, suspended the sentence and released Respondent No. 2 on bail. Seeking cancellation of the said relief, the present appeal has been filed by the informant.

6. Assailing the impugned order, the learned Senior Counsel appearing for the appellant advanced the following submissions:

(i) The High Court committed a serious error in releasing Respondent No. 2 on bail by suspending the sentence in exercise of powers under Section 389 of the Code of Criminal Procedure, 1973[4].

(ii) It was submitted that once Respondent No. 2 stands convicted for a serious offence punishable under Section 302 IPC, the presumption of

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[3] Hereinafter referred to as "the trial Court"
[4] For short, "Cr.P.C."

innocence no longer survives, and therefore, the grant of suspension of sentence ought to be an exception rather than the rule.

(iii) The prosecution case rests on cogent and reliable ocular evidence. The trial Court, upon due appreciation of the evidence, relied upon the testimonies of PW-1 (Mukteshwar Mishra), PW-2 (Shyam Bihari Yadav) and PW-5 (the appellant), all of whom consistently deposed that the accused persons including Respondent No. 2 caught hold of the deceased while co-accused Shiv Jee Pandey fired the fatal shot.

(iv) In light of such consistent and credible eyewitness testimony, the trial Court rightly returned a finding of guilt against Respondent No. 2. In such circumstances, the High Court erred in granting suspension of sentence.

(v) The High Court further erred in reappreciating the evidence and entering into questions such as the specific role attributed to Respondent No. 2, which is impermissible at the stage of considering suspension of sentence.

(vi) It was contended that at the stage of Section 389 Cr.P.C., the appellate court ought not to undertake a detailed examination of evidence or render findings on merits. Reliance in this regard was placed on the decision of this Court in ***Chaman Lal v. State of U.P. and another***[5].

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[5] (2004) 7 SCC 525

(vii) It was further pointed out that an earlier application for bail filed by Respondent No. 2 had already been rejected by the High Court, taking note of his active participation in the offence, and there was no change in circumstances warranting a different view.

(viii) Respondent No. 2 is involved in multiple criminal cases, namely:

- P.S. Case Buxar (I) No. 165 of 2014 dated 24.11.2014 under Sections 341, 323, 379 and 509 IPC
- P.S. Case Buxar (I) No. 166 of 2014 dated 24.11.2014 under Sections 341, 323, 379 and 504 IPC
- P.S. Case Buxar (I) No. 3 of 2017 dated 03.01.2017 under Sections 307, 386, 147, 148, 149, 504 IPC and Section 27 of the Arms Act.
- P.S. Buxar (I) No. 88 of 2019 dated 05.06.2019 under Section 406, 420, 467, 468, 471 and 385 IPC.

(ix) It was further submitted that the appellant had filed Information Petition No. 3571 of 2024 before the Chief Judicial Magistrate, Buxar, alleging that Respondent No. 2 and other accused persons have been continuously threatening him and his family. A similar complaint was also lodged before the Police Station, Buxar (I), thereby indicating a real and continuing threat to the appellant's safety.

(x) Pointing out the aforesaid, it was prayed that the present appeal be allowed and the impugned order be set aside.

7. The learned counsel appearing for Respondent No. 1 – State of Bihar supported the appellant and sought cancellation of the suspension of sentence granted to Respondent No. 2.

7.1. It was submitted that Respondent No. 2 is a life convict, who has been sentenced after a full-fledged trial. The trial Court, after examining seven prosecution witnesses and documentary evidence, recorded a finding of guilt. It was further contended that Respondent No. 2 has criminal antecedents, with four prior cases registered against him, and that mere long incarceration could not be a ground for suspension of sentence in a case of this nature.

8. *Per contra*, the learned Senior Counsel appearing for Respondent No. 2 made the following submission:

(i) Respondent No. 2 has been falsely implicated owing to longstanding electoral rivalry between closely related families residing in close proximity. The appellant himself admitted in cross-examination to having instituted multiple cases against the accused, thereby lending support to the defence of false implication.

(ii) The appellant has suppressed material facts, including the acquittal of the accused in an earlier case, and has also relied upon additional materials which are unreliable and fabricated.

(iii) On merits of the prosecution case, it was urged that the case suffers from inherent inconsistencies and improbabilities. In particular, there exists a material contradiction between ocular and medical evidence, inasmuch as the witnesses speak of two gunshots whereas the post-mortem records only a single injury; and the prosecution version is inherently improbable, as despite the allegation of close-range firing, none of the persons allegedly holding the deceased sustained any injury.

(iv) It was also submitted that no specific overt act has been attributed to Respondent No. 2, and his alleged role is limited to holding the deceased, thereby attracting only constructive liability under Section 34 IPC.

(v) Defending the impugned order, it was contended that the High Court has merely formed a prima facie view without undertaking any impermissible reappreciation of evidence, in consonance with the principles laid down in ***Rama Narang v. Ramesh Narang***[6].

(vi) Respondent No. 2 is entitled to suspension of sentence as he has remained in custody for approximately six years and nine months, and the appeal itself has remained pending for nearly seven years. In this regard, reliance was placed

[6] (1995) 2 SCC 513

on ***Satender Kumar Antil v. CBI***[7], to submit that prolonged delay in disposal of appeals is a relevant consideration for grant of bail.

(vii) Reliance was also placed on the Constitution Bench decision in ***P. Ramachandra Rao v. State of Karnataka***[8] to emphasise the right to speedy trial as part of Article 21 of the Constitution.

(viii) The allegations of threat and installation of CCTV cameras were denied as being misconceived and motivated.

(ix) The impugned order has been passed upon due consideration of relevant factors, contains only prima facie observations, and therefore, does not warrant interference by this Court.

9. We have heard the submissions advanced on behalf of the parties and perused the materials available on record.

10. The challenge in the present appeal is to the order passed by the High Court granting suspension of sentence to Respondent No. 2 during the pendency of the criminal appeal and releasing him on bail. The appellant / informant seeks cancellation of the said order.

11. The prosecution case arises out of an incident dated 04.01.2016, in which the deceased was allegedly shot dead by the principal accused, Shiv Jee Pandey, while the appellant narrowly escaped. The occurrence is stated to have been

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[7] (2022) 10 SCC 51
[8] (2002) 4 SCC 578

triggered by political rivalry relating to local elections. As per the *fardbayan*, the motive emanated from prior hostility and threats extended by the accused persons.

12. During the trial, reliance was placed primarily on the ocular testimonies of PW-1, PW-2 and the appellant / informant. Upon due appreciation of the evidence on record, the trial Court found the testimonies to be credible and cogent, and concluded that the accused persons had acted in furtherance of their common intention, thereby returning a finding of guilt and convicting them for the offences as stated above. They were sentenced accordingly, including to life imprisonment. Aggrieved by the judgment of conviction and order of sentence, Respondent No. 2 filed a criminal appeal, which is pending before the High Court.

13. The principal contention urged on behalf of the appellant is that suspension of sentence ought not to have been granted in a case involving conviction for a grave offence punishable under Section 302 IPC, in the absence of any exceptional or compelling circumstances.

14. The issue that arises for consideration herein is whether the order granting suspension of sentence to Respondent No. 2 calls for interference. At the outset, it must be emphasised that the parameters governing suspension of sentence post-conviction are qualitatively distinct from those applicable at the stage of pre-trial bail. Upon conviction, the presumption of innocence stands displaced by a judicial determination of guilt, and the appellate court is required to

exercise its jurisdiction under Section 389 Cr.P.C. with due circumspection and restraint.

15. In ***State of Haryana v. Hasmat***[9]**,** this Court has categorically held that suspension of sentence in serious offences must not be granted as a matter of routine, and that the appellate court must apply its mind to the nature of the offence, the manner of its commission, and the gravity of the findings recorded by the trial Court. It was further emphasised that reasons must be recorded in writing, reflecting due consideration of relevant factors, and that orders granting suspension of sentence should not be passed mechanically. The following paragraphs are apposite:

> "***6.*** *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. 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 not be passed as a matter of routine.*
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> …..
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> ***9.*** *In Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [(2002) 9 SCC 366 : 2003 SCC (Cri) 1197] it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The impugned order of the High Court does not meet the requirement. In Vijay Kumar case [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should*

[9] (2004) 6 SCC 175

consider the relevant 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. These aspects have not been considered by the High Court while passing the impugned order."

16. In ***Om Prakash Sahni v. Jai Shankar Chaudhary and another***[10]**,** this Court has clarified the scope of power under Section 389 Cr.P.C. by holding that suspension of sentence may be justified only where a palpable infirmity is apparent on the face of the record, indicating that the conviction may not ultimately withstand scrutiny. It has been expressly held that at this stage, the appellate court is not expected to undertake a reappreciation of evidence or delve into a detailed evaluation of the prosecution case. The relevant paragraphs are extracted hereunder:

"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 [Jai Shankar Chaudhary v. State of Bihar, 2022 SCC OnLine Pat 7144]?*

Section 389CrPC and the law on the suspension of sentence

20. *Section 389CrPC 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:*

[10] (2023) 6 SCC 123

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."

21. *Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to Black's Law Dictionary (Seventh Edition), the word "suspend" means, inter alia, to interrupt; postpone; defer. 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, 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 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 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 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) CrPC.*

25. *In Rajesh Ranjan Yadav v. CBI [(2007) 1 SCC 70 : (2007) 1 SCC (Cri) 254], it has been held under paras 8, 9 and 10, respectively, which are as follows: (SCC pp. 74-75)*

> *"8. The learned counsel for the appellant then relied on the decision of this Court in Kashmira Singh v. State of 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)*
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> > *'2. ... 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. The 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.

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 that there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted."

(emphasis supplied)

26. *This Court in Ash Mohammad v. Shiv Raj Singh [(2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], has observed in para 30, as follows: (SCC pp. 458-59)*

"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. 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 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 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."

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30. *In Kishori Lal v. Rupa [(2004) 7 SCC 638 : 2004 SCC (Cri) 2021], this Court has indicated the factors that require to be considered by the Courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows: (SCC pp. 639-40, paras 4-6)*

> *"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 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.*
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> *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.*
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> *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 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 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 [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [(2002) 9 SCC 366 : 2003 SCC (Cri) 1197], it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar v. Narendra, [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195], it was held 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 the relevant 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 Vasant Tukaram Pawar v. State of Maharashtra [(2005) 5 SCC 281 : 2005 SCC (Cri) 1052] and Gomti v. Thakurdas [(2007) 11 SCC 160 : (2008) 1 SCC (Cri) 644].*

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 abovesaid 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 takes 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 CrPC and try to pick up a few lacunae 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. The 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.*
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> ***36.*** *In fact, it was expected of the State as the prosecuting agency to challenge the order [Jai Shankar Chaudhary v. State of Bihar, 2022 SCC OnLine Pat 7144] 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.*
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> ***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."*

17. Following the aforesaid principles, this Court in ***Janardan Ray v. the State of Bihar and another***[11]**,** set aside an order granting suspension of sentence in a case under Section 302 IPC, reiterating that such relief can be granted only in rare and exceptional circumstances and that reappreciation of evidence at the stage of Section 389 Cr.P.C. is impermissible. The relevant paragraphs of the said judgment are usefully reproduced below:

> *"7. Having regard to the afore-stated settled legal position, we are of the opinion that the High Court has committed gross error in appreciating the evidence already appreciated by the trial Court at the time of considering the applications seeking suspension of sentence pending the appeal. Since this was a case of conviction under Section 302 IPC, the initial presumption available to the accused before conviction, would not be available to him. The High Court could not have suspended the sentence, reappreciating the evidence at the stage of Section 389 and trying to pick up a few lacunae or loopholes here or there in the case of prosecution. The consideration of High Court to the submission made on behalf of the accused that he had not misused the liberty during the trial or that the appeal was not likely to be heard in near future, could not be said to be the proper consideration for suspending the sentence of the accused, who have been convicted for the serious offence under Section 302 IPC. It is only in rare and exceptional circumstances, the benefit of suspension of sentence*

[11] Criminal Appeal Nos. 1892 – 1893 of 2025 decided on 09.04.2025

should be granted by the appellate court to the accused convicted for the serious offence under Section 302 IPC.

8. In that view of the matter, the common impugned order being in the teeth of settled legal position, the same is untenable at law and deserves to be set aside. Accordingly, the impugned order dated 20.07.2024 is set aside.

9. The respondents – accused are directed to surrender themselves before the trial Court within a period of two weeks.

10. The appeals stand allowed."

18. Tested on the touchstone of the aforesaid settled principles, the impugned order cannot be sustained. A perusal of the record indicates that the prosecution case is founded on ocular evidence, which has been duly appreciated and accepted by the trial Court. Without considering the same in a proper perspective, the High Court erred in granting suspension of sentence to Respondent No. 2 and released him on bail.

19. The reliance placed by the High Court on the circumstance that the fatal shot was attributed to a co-accused, while Respondent No. 2 has been convicted with the aid of Section 34 IPC, is wholly misconceived. The doctrine of constructive liability under Section 34 IPC is well settled; where an offence is committed in furtherance of a common intention, each participant is equally liable for the act done in execution thereof. The absence of a specific overt act cannot, at this stage, dilute the culpability of the convict, particularly in the face of a finding of common intention.

20. It is further evident that the High Court has embarked upon a selective consideration of certain aspects of the prosecution case, which in substance

amounts to a premature reappreciation of evidence. Such an approach is directly contrary to the law laid down by this Court in *Om Prakash Sahni* (supra).

21. As held in *State of Haryana v. Hasmat* (supra), undue weight cannot be accorded to the period of incarceration or the pendency of the appeal in isolation, particularly where the conviction is founded on credible evidence.

22. The criminal antecedents of Respondent No. 2 also assume significance. The prosecution has brought on record multiple prior cases registered against him, including offences involving violence and use of arms. Though it has been contended that such cases arose out of political rivalry and have culminated in acquittal, such a contention cannot, at this stage, efface the relevance of antecedents as a factor in assessing the propriety of granting suspension of sentence.

23. Additionally, material has been placed to indicate that Respondent No. 2 has allegedly attempted to intimidate the appellant by issuing threats and initiating false cases. The explanation offered on behalf of Respondent No. 2 that such allegations are motivated, does not inspire confidence of this Court, particularly at this interlocutory stage.

24. Having regard to the seriousness of the offence, the nature of the evidence as accepted by the trial Court, the absence of any apparent infirmity in the judgment of conviction, and the settled legal position governing suspension of sentence, this Court is of the considered view that the High Court was not

justified in granting suspension of sentence to Respondent No. 2. The impugned order, therefore, warrants interference by this Court.

25. Accordingly, this Criminal Appeal is allowed. The impugned order granting suspension of sentence to Respondent No. 2 is set aside. Consequently, the bail bond furnished by Respondent No. 2 stands cancelled. He is directed to surrender before the concerned trial Court within a period of two weeks from today, failing which the trial Court shall take necessary steps to secure his custody in accordance with law.

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

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27. This Criminal Appeal arises out of the judgment and order dated 09.05.2025 passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No. 1182 of 2018, whereby, the High Court, during the pendency of the appeal, suspended the sentence awarded to Respondent No. 2, Ghanshyam Pandey @ Mantu Pandey, and released him on bail, on the ground that his case stood on a footing identical to that of Shekhar Pandey @ Shekhar Suman Pandey @ Sintu Pandey @ Situ, who is Respondent No. 2 in SLP (Crl.) No. 4241 of 2025.

28. In view of the judgment rendered in the main case, which squarely applies to the present case as well, this Criminal Appeal is allowed. The impugned order

granting suspension of sentence to Respondent No. 2 is set aside. Consequently, the bail bond furnished by Respondent No. 2 stands cancelled. He is directed to surrender before the concerned trial Court within a period of two weeks from today, failing which the trial Court shall take necessary steps to secure his custody in accordance with law.

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

…….J.
[AHSANUDDIN AMANULLAH]

…….J.
[R. MAHADEVAN]

NEW DELHI;
APRIL 10, 2026.