

(2018) 02 PAT CK 0092

In the Patna High Court

Case No : Criminal Appeal (Sj) No. 2319, 2348 Of 2017

Jhandu @ Sundar And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 389, 389(1), 389(3), 436(A), 437, 438, 439
Indian Penal Code, 1860 — Section 34, 302, 376, 452
Constitution Of India, 1950 — Article 20, 21

Citation : (2018) 2 PLJR 681

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Shilpi Keshri, Abhay Kumar, Binod Bihari Singh

Final Decision : Dismissed

Judgement

Heard learned counsel for the appellants as well as learned APP.

1. A prayer has been made on behalf of all the three appellant, namely, Jhandu @ Sundar Paswan (Criminal Appeal (SJ) No.2319 of 2017) as well as

Jagdish Beldar, Moti Paswan (Criminal Appeal (SJ) No.2348 of 2017) to grant bail after suspending sentence as provided under Section 389(1) CrPC.

2. All the appellants have been found guilty for an offence punishable under Section 376/34 of the IPC and sentenced to undergo RI for 10 years as

well as to pay fine of Rs. 15,000/- and in default thereof, to undergo SI for one year additionally, under Section 452/34 IPC, sentenced to undergo RI

for 5 years as well as to pay fine appertaining to Rs. 5,000/- in default thereof, to undergo SI for 3 months additionally with a further direction to run

the sentences concurrently in connection with Sessions Trial Nos. 1370/2011 as well as 801/2002 respectively arising out of Daniyawan PS Case No.

10/2001, by the Additional Sessions Judge-14, Patna where both the sessions trial sailed independently.

3. Before entering into merit of the case, from perusal of the lower court records, it is evident that initially Complaint Case No. 354/2001 was filed

which was sent to Daniyawan for institution and investigation as provided under Section 156(3) of the CrPC whereupon Daniyawan PS Case No.

10/2001 was registered wherein, after conclusion of the investigation charge-sheet was submitted. At that very moment, appellant, Jhandu @ Sundar

Paswan along with Jainandan Dusad were shown as absconder. While Jagdip Beldar and Moti Paswan's presence were since before and on

account thereof, after taking cognizance vide order dated 25.07.2001, the case was bifurcated whereupon Jagdip and Moti Paswan were committed to

the court of sessions whereupon Sessions Trial No.801/2002 commenced. First of all presence of Jainandan Paswan was procured, and for that, S.Tr.

No. 490/2003 commenced which has been tagged with S.Tr. No. 801/2002 who has not challenged the finding and then relating to supplementary

record, Jhandu Paswan's presence was subsequently procured from another case wherein he was under custody, committed bearing S.Tr. No.

1370/2011 That being so, Sessions Trial No. 801/2002/490/2003 proceeded against appellants, Jagdip and Moti while Sessions Trial No. 1370/2011

proceeded against sole accused, Jhandu @ Sundar Paswan. Both the sessions trials sailed independently but, judgment was pronounced on the same

day, both the appeals happen to be pending and as it happens to be an interlocutory matter argued by the same learned counsel, on account thereof,

for the purpose of convenience, the same is being decided by a common order.

4. Two fold arguments have been raised on behalf of learned counsel for the appellants, more or less, applicable in the present fact and circumstances

of both the appeals. The first point happens to be that appellant, Jhandu @ Sundar Paswan happens to be under custody since 12.06.2017 while

appellants, Jagdip Beldar and Moti Paswan are also under custody since 12.06.2017, on account thereof, considering the period of custody

inconsonance with the fact that these appeals are not going to be heard in near future, appellants should be released on bail after suspending sentence

till pendency of instant appeals. To substantiate such plea, learned counsel for the appellants has referred the following cases:-

1. Narayan @ Naran v. State of Rajasthan {(2007) 6 SCC 465}
2. Suddu Kumar v. the state of Bihar {Cr Appeal (DB) No. 583 of 2015}
3. Hussain v. Union of India (Cr. Appeal No. 509/2017) with Aasu v. State of Rajasthan (Cr Appeal No. 511/2017).

6. It has also been submitted that though trial of all the appellants sailed independently that means to say, Jagdip Beldar, Moti Paswan under Sessions

Trial No. 801/2002/490/2003 whereunder apart from the victim other witnesses have also been examined and if the evidence of victim is taken

together in consonance with the evidence of other PWs, apart from 19 days delay in filing complaint coupled with non-examination of doctor and I.O.

it is apparent that she happens to be unreliable irrespective of allegation of rape attributed against the appellants whereupon, these appeals are likely to

be allowed and that being so, considering the period of detention inconsonance with the nature of the evidence, it is a fit case whereunder all the

appellants should be allowed to avail privilege as provided under Section 389(1) of the CrPC. Same mode or argument has also been made relating to

appellant, Jhandu @ Sundar Paswan (Cr. Appeal (SJ) No. 2319/2017).

7. On the other hand, learned APP opposed the prayer and submitted that making house trespass in the night whereunder the victim was ravished did

not justify the prayer having been made on behalf of appellants. Furthermore, it has also been submitted that while considering prayer of bail in terms

of Section 389(1) the merit of the case should not be considered in depth otherwise it will adversely affect on the fate of the appeals which should be

forbidden for the present irrespective of the submission having been made on behalf of appellants on merit of the case.

8. Two Articles are relevant for the present controversy and those are Articles 20 and 21 of the Constitution of India which read as follows:-

20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an

offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the

offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

9. From plain reading of the aforesaid Articles, it is apparent that these Articles are exceptions to the fundamental rights whether he happens to be

citizen or not, as it denotes person without proper identification. That means to say, the fundamental right which happens to be embedded impliedly is

found duly barricaded and for that, the only caution happens to be as is evident from chronological study of the aforesaid two Articles in accordance

with law. That means to say, the aforesaid eventuality is found permissible having gazed in accordance with law.

10. There happens to be basic theory of criminal jurisprudence that an accused is found innocent till there happens to be finding of a court of

competent jurisdiction, once a verdict of guilt comes out, the presumption of innocence got erased. As soon as, accused is found guilty, in terms of

hierarchy of the judiciary as well as to have proper redressal of his grievance so many forums have been identified whereunder the convict has been

given statutory right to file an appeal or revision, as the case may be. And that happens to be reason behind that with regard to statutory appeal

provision of bail till pendency of appeal after suspension of sentence has been provided, though subject to proper consideration by the appellate court,

in case the sentence is found more than three years, otherwise, the lower court will itself allow in terms of Sections 389(3) of the CrPC even then

subject to Section 389(1) CrPC. For better appreciation the same is quoted hereinbelow:-

Section 389 in The Code Of Criminal Procedure, 1973.

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.

(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.

11. From perusal of Section 389 CrPC, it is evident that save and except, the matter falling under category of sub- section-3 neither there happens to

be any principle laid down nor criteria has been fixed for consideration of the prayer of the appellant/convict and further, having a judgment of

conviction erasing the presumption leaning in favour of accused regarding innocence till contrary recorded by the court of competent jurisdiction, and

in the aforesaid background, there happens to be distinction in between pre-conviction as well as post conviction prayer, Viz, Sections-437, 438, 439

CrPC as well as Section 389(1) of the CrPC.

12. On account of shortcoming of strength of the judges in comparison to filing, pendency of the appeal, backlog is found piled up in such a manner

that it looks, if not impossible but a Herculean task to hear and decide the appeal at an earliest, therefore, allowing the appellants to remain under

custody for years together and the same has been taken into consideration by the Apex Court at different occasions in different manner, though

classified that in heinous offences, custody would not entitle the appellant to be released on bail till pendency of appeal and the offence of rape

happens to be one of them.

13. In *Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through Its Director* as reported in (2007) 1 SCC 70, it has been held under paras 8, 9, 10 which

are as follows:-

8. Learned counsel for the appellant then relied on the decision of this Court in *Kashmira Singh vs. State of Punjab* 1977(4) SCC 291. In paragraph 2

of the said decision it was observed as under:

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 to be such a person who had 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. Learned counsel for the appellant then relied on the decision of this Court in *Bhagirathsinh vs. State of Gujarat* 1984 (1) SCC 284, *Shaheen Welfare Association vs. Union of India & Ors.* 1996(2) SCC 616, *Joginder Kumar vs. State of U.P. & Ors.* 1994(4) SCC 260 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 there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

14. Side by side, the Honâ??ble Apex Court in *Ash Mohammad v. Shiv Raj Singh* as reported in (2012)9 SCC 446 has observed under para-30 as

follows:-

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 of liberty of the accused.

15. In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh* as reported in AIR 1978 SC 439 wherein the appellant was acquitted by the learned lower court which was set aside by the High Court and while SLP was allowed with regard to an appeal during course of which a prayer for bail was made and considered, though allowed, under para-19, it has been held as follows:-

“19. The petitioners have suffered imprisonment around a year and a reasonable prediction of the time of the hearing of the appeal may take us to a few years ahead. Which means that incarceration during that period may possibly prove an irrevocable injury if the appeal ends in their favour. The Magistrate's report about the conduct of the petitioners while in sub-jail is not uncomplimentary”.

16. In *Babu Singh v. State of U.P* as reported in AIR 1978 SC 527 wherein prayer for bail at an earlier occasion was rejected by the Apex Court, revived subsequently, during course of pendency of an appeal has been taken into consideration apart from others *Kashmira Singh's* case (AIR 1977 SC 2147) and held as follows under para-25:-

“Having regard to this constellation of considerations, carefully viewed in the jurisprudential setting above silhouetted, we are of the view, that subject to certain safeguards, the petitioners are eligible to be enlarged on

bail.â??

17. In *Bhagwan Rama Shinde Gosai v. State of Gujarat* reported in AIR 1999 SC 1859, wherein appellants were convicted by the lower court against

which the appeal was pending before High Court, the High Court successively rejected prayer for grant of bail till pendency of appeal after

suspending the sentence, it has been held as follows:-

3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can

be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against

suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be

of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the

appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be

an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously

the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of

course appellate courts can impose similar conditions when bail is granted.

18. In *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)* reported in 2008 Cr.L.J. 3524 (popularly known as Jessica Lalâ??s murder case),

the Honâ??ble Apex Court had occasion to see the rival submissions as well as different judicial pronouncements referred by both sides over prayer

for bail, it has been held as follows:-

32. In the above cases, it has been observed that once a person has been convicted, normally, an appellate Court will proceed on the basis that such

person is guilty. It is no doubt true that even thereafter, it is open to the appellate Court to suspend the sentence in a given case by recording reasons.

But it is well settled, as observed in *Vijay Kumar* 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 all 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, the

desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

33. In Hasmat, this Court stated;

6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the applicant 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". (emphasis supplied)

34. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail.

19. In Surinder Singh @ Shingara Singh v. State of Punjab as reported in AIR 2005 SC 3669 wherein the Honâ??ble Apex Court had occasion to consider the guideline issued by the bench of Haryana High court in Dharampal v. State of Haryana {(2000) 1 CLR-74} had considered other judgments including Kashmira Singhâ??s case (AIR 1977 SC 2147), had held as follows:-

11. We agree with the submission urged before us that the directions contained in the aforesaid judgment of the High Court are only in the nature of guidelines and the High Court should not be understood to have laid down an invariable rule to be observed with mathematical precision. In fact in the very first paragraph of the judgment the learned Judges observed that they were making ""an attempt to frame certain guidelines"" for the grant of bail.

Difficulties may arise if such a direction is treated as an invariable rule in the

matter of grant of discretionary relief. The rule laid down in Dharampal's case may be inferentially understood to mean that unless a convict has undergone five years imprisonment, he should not be released on bail. This would again lead to travesty of justice, because in a given case having regard to the evidence on record and the reasoning of the Court convicting the accused, the High Court in an appeal may well be persuaded and justified in granting bail to the appellant even while admitting his appeal.

12. We, therefore, hold that the High Court of Punjab and Haryana in Dharampal's case laid down guidelines which ought to be kept in mind by Courts dealing with applications for grant of bail in a pending appeal. It does not lay down any hard and fast rule of universal application. As we have observed earlier, it would be futile to lay down any strait jacket formula in such matters.

20. Guidelines have been issued by the High Court of in Dharampal's case happens to be:-

â?|â?|â?|.We, therefore, direct that life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail pending the hearing of their appeals should they make an application for this purpose. We are also of the opinion that the same principles ought to apply to those convicted by the Courts Martial and such prisoners should also be entitled to release after seeking a suspension of their sentences. We further direct that the period of five years would be reduced to four for females and minors, with at least two years imprisonment after conviction. We, however, clarify that these directions shall not be applicable in cases where the very grant of bail is forbidden by law".

21. In Bakshish Ram v. State of Punjab reported in (2009) 6 SCC 561 whereunder the bail was granted to the appellant no.2, a lady aged about 80 years had considered other judgments on the score of granting of bail during pendency of appeal after suspending the sentence under following paragraphs:-

21. This Court in the case of Talab Haji Hussain vs. Madhukar Purshottam Mondkar, 1958 SCR 1226, has observed :

It is to be remembered that it is not possible to give a list of all the factors which a court may consider in the disposal of a bail application. But, putting

the whole thing singly the object, which a court dealing with in an application for bail must keep in mind, is that in any case there should not be any impediment in the progress of the fair trial.

8) This Court in the case of *State of Maharashtra v. Anand Chintaman Dighe*, (1990) 1 SCC 397, has stated that where the offence is of serious

nature, the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence.

9) It is clear from the various decisions of this Court as stated above that, cases where a serious offence had been committed and the accused had

been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The

seriousness and gravity of the offence must be looked into before granting the bail. In the instant case, accused are convicted by the Trial Court for

harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction is confirmed by the High Court.

10) In the case of *Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291, this Court observed that, 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.

22. In *Chandra Shekhar Bharti v. State of Bihar* reported in 2014 CrLJ 2953, the matter has been dealt with in detail by the Division Bench taking into

account the origin, requirement, manner whereunder it could be exercised and how it is to be performed by the appellate court, it has been summarized

under para-111 which is as follows:-

111. The discussion, undertaken hereinbefore, may be summarized as follows:--

a. While considering an application for suspension of sentence, the Appellate Court has to record reasons, in writing. The requirement of recording of

reasons must be preceded by careful consideration of the relevant aspects of the case at hand including issues of human rights or other relevant

aspects as envisaged under Article 21 of the Constitution of India.

b. The mere fact that during the period, when an accused person was on bail during trial, there was no misuse of liberty does not per se warrant

suspension of execution of sentence and grant of bail. What really is necessary to

be considered by the Court is whether reasons exist, on the merits of the case, to suspend the execution of sentence and, thereafter, grant bail to the appellant.

c. During pendency of an appeal against conviction or sentence or both, temporary or interim or provisional suspension of sentence, on some extremely rare circumstances, is inherent in the jurisdiction of the Appellate Court, under Sec. 389 Cr.P.C., by the doctrine of implied power. Such a recourse must be taken only when pressing circumstances are shown to exist and when the Court is of the opinion that further inquiry would be required before finally disposing of the application for suspension of sentence pending decision on the convict's appeal.

d. It may be equally necessary to mention that circumstances, which show existence of a right within the ambit Article-21 of the Constitution of India, may be considered as valid circumstances, while granting interim suspension pending disposal of an appellant's application seeking suspension of sentence and bail.

e. Notwithstanding the fact that a prisoner's application for suspension of sentence and his consequent release on bail cannot be allowed on merit or has been rejected on merit, the Appellate Court still retains the power to suspend sentence for such period as the Court may consider imperative, particularly, when the Court finds that such suspension of sentence would make the right to life, guaranteed by Article 21, meaningful. Thus, inordinate delay, in disposal of appeal, terminal ailments, marriage of daughter, performing last rites, etc., are circumstances falling in the broader definition of right to life"" and can become valid grounds for suspension of sentence of a prisoner and his release on bail for a temporary period or until disposal of his substantive appeal.

23. In connection with Cr. Appeal (DB) No. 583/2015, *Suddu Kumar v. The State of Bihar*, referred by the learned counsel for the appellant, after considering the earlier Division Bench decision, *Chandrashekhar Singh (supra)* as well as Supreme Court judgment *Surinder Singh (Supra)*, the Full Bench decision of Patna High Court in *Anurag Baitha v. State of Bihar* 1987 PLJR 485 concluded as follows:-

18. Now apart from principle it appears to me that the proposition that the issue of delay in the hearing of appeals dehors the merit is directly and

materially relevant for the question of grant of bail to the convicts is equally borne out by persuasive and indeed binding precedents. The question was

directly raised before the Division Bench in the case of Harbhajan Singh v. State of Punjab, 1977 Cri LJ 1424 to which I was a party. After

examination of the principles and precedent it was concluded therein as follows : --

I believe that in an issue of this nature, the attitude of this Court cannot necessarily remain static. It is not possible to lose sight of the fact that in

normal routine at present the criminal appeals filed in the year 1973 are as yet being listed for hearing. Indeed, as many as 40 life sentence appeals of

that year are still pending disposal. In order to avoid any invidious distinctions this Court has rightly adhered to the practice that normally all these life

sentence appeals are to be listed and heard strictly in accordance with their number and in the order in which they are filed That being so, the case of

the petitioners connected as it is with their co-appellants who have been sentenced to life imprisonment is unlikely to be listed for hearing till the

passage of another year or two. Nor do we see the chance of any favourable dramatic change in the context of hearing these appeals in the

foreseeable future. That being so the petitioners who have been sentenced to seven years' imprisonment would have undergone nearly the whole, or in

any case, a substantial part of their sentence by that time. That is a factor which we are unable to ignore in the present case. Nor can we accede to

the stand of the respondent that the delay in this context is irrelevant to the issue.

However, the authority which seems to me as clinching the issue is that of the final Court itself in Kashmira Singh v. State of Punjab, AIR 1977 SC

2147 : (1977 Cri LJ 1746) directly in the context of special leave appeals pending before their Lordships. What was said there, to my mind, is doubly

and even more forcefully applicable to the substantive criminal appeals pending before the High Court. To recall the memorable words therein in

extenso whilst abandoning the long standing, fossilised practice of declining bail in such cases Bhagwati, J. (the learned Chief Justice as he then was)

observed as follows : --

The appellant contends in this application that pending the hearing of the appeal he should be released on bail Now, the practice in this Court as also

in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. 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 put 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.

19. The observations aforesaid were made nearly a decade ago and have since been consistently followed by the final Court. I think that the time has

come and, indeed, the earlier the better that the High Courts should equally modulate their practice on identical lines spelt out by the final Court itself.

This really seems to be the more so in the expanded concept or liberty under Article 21 and the now universally accepted right of a speedy public trial

thereunder. Recasting the words of their Lordships above, if the High Court is not in a position to hear the appeal of an accused within a reasonable

period of time, it must ordinarily (unless there are cogent grounds for acting otherwise) release the accused on bail in cases of substantive appeals on

capital charges pending before it.

24. Learned counsel for the appellant has also referred the case of Hussain v. Union of India (Cr. Appeal No. 509/2017) with Aasu v. State of

Rajasthan (Cr Appeal No. 511/2017) wherein speedy disposal of the trial/appeal has been reiterated and for that, High Court has been requested to

invent appropriate, proper methodology so that, it should not be kept for the period beyond expectation of the victim of getting his appeal disposed of

within proper time frame and after referring, discussing the relevant pronouncements on that very score, summed up the discussions under para-27 in

following manner:-

27. To sum up:

(i) The High Courts may issue directions to subordinate courts that â?

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be

normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence

likely to be awarded if conviction is recorded such undertrial must be released on

personal bond. Such an assessment must be made by the concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

(emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal

appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal

(supra)

25. Learned counsel for the appellant, in order to justify his prayer for grant of bail till pendency of instant appeal has taken through the evidence of

each and every PW scrutinizing, analyzing the evidence on the basis of which, it has been submitted that on account of aforesaid deficiency,

infirmities, improbabilities visualizing therefrom, the judgment of conviction and sentence would not sustain, that being so, the appellant should be

allowed to avail the privilege of bail after suspending the sentence till pendency of appeal. It is needless to say that on merit, appeal is yet to be listed

for hearing.

26. In *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)* (supra), it has been held by the Honâ??ble Apex Court which is as follows:-

â??16. We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or

the other, therefore, are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the

evidence on record. It, however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal

court. Initial presumption of innocence in favour of the accused, therefore, is no more available to the applicant.â??

27. In the case of Atul Tripathi v. State of Uttar Pradesh reported in (2014) 9 SCC 177 whereunder apart from identifying the differences of

consideration of prayer for grant of bail relating to pre-conviction stage as well as post conviction stage, it has been held under para-14 which is as

follows:-

14. Service of a copy of the appeal and application for bail on the public prosecutor by the appellant will not satisfy the requirement of first proviso to

Section 389 Cr.PC. The appellate court may even without hearing the public prosecutor, decline to grant bail. However, in case the appellate court is

inclined to consider the release of the convict on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the

appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the

court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence,

age, criminal antecedents of the convict, impact on public confidence in the justice delivery system, etcâ?|â?|..

28. That means to say any remark at the present moment over merit of the appeal will cause prejudice to either side and so, the submissions having

been made on behalf of learned counsel for the appellants challenging the veracity of the evidences of the PWs is accordingly, forbidden.

29. Considering the yardstick having been framed by the different judicial pronouncement as referred above whereby detention has not been identified

to be sole criteria for consideration of post conviction prayer of bail by the appellate court, as such, the prayer for bail of the appellant for the present

in terms of Section 389(1) of the CrPC is found non maintainable, hence, refused.

30. Office is directed to list for hearing in chronological way.