

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

+ **Crl. M.B.101/2012 in CRL.A. 268/2010**

**Date of Decision: 29.03.2012**

**MADAN LAL & ANR**

**..... Appellants**

Through: Mr. Vivek Sood, Advocate

Versus

**STATE**

**..... Respondent**

Through: Ms Fizani Husain, APP with SI  
Ram Partap, P.S. Dwarka, Sector-  
23.

**CORAM:**

**HON'BLE MR. JUSTICE M.L. MEHTA**

**M.L. MEHTA, J.**

1. The present appeal was filed by appellants namely Madan Lal and Mohinder assailing the judgment and order on sentence dated 13.4.2009 and 14.1.2010 passed by learned ASJ, Delhi whereby the appellants were convicted and sentenced to undergo RI for 10 years with fine of Rs. 10,000/- each under Section 376(g) IPC in case FIR No.557/2006 registered at Police Station Dwarka, New Delhi. They are in custody since 29.6.2006.

2. The instant application under Section 389 Cr.PC read with Section 482 Cr.PC is preferred by the appellants/ applicants for suspension of sentence and grant of interim bail. The main ground for suspension of sentence and grant of interim bail that has been pressed is that the appellants are in jail for more than five years and want to establish family and social ties. It has been argued that the grounds on which parole is granted to the convicts under the Guidelines of 2010, and one of which is re-establishing the family and social

ties, would be applicable to the grant of interim bail to the appellants. Reliance was placed on the decision of Division Bench of this Court dated 19.12.2011 in *Rajesh Kumar Vs. Govt. of NCT of Delhi* [W.P.(C) 5128/2011].

3. I have heard learned counsel for the appellants as also learned APP on behalf of the State and perused the record. With regard to the consideration of Parole/ Furlough Guidelines of 2010 for the release of the convict on interim bail or suspension of sentence, the Division Bench of this Court in the aforesaid case held as under :

*“7. We are however of the opinion that even when application for interim suspension of sentence or bail is filed by a convict in a pending appeal, it is always open to the convict to seek suspension/ bail from this Court on the grounds as provided for regular parole and the High Court can always take those grounds in consideration while entertaining applications for suspension and/or interim suspension of the sentence. There is nothing in Section 389 or otherwise in law, barring the appellate Court from granting interim bail or suspending the sentence on considerations as for parole. Clause 10 very clearly stipulates that the “convict can seek appropriate orders from the High Court” which means that the convict can seek the order on parity of grounds for regular parole.....”*

4. Now since this Court is seisin of appeal of the convicts, as per Clause 10 of the Guidelines, the parole cannot be granted to the convicts by the Competent Authority. As per the said clause, the appropriate orders can be passed by this Court in such cases where the appeal of the convicts are pending. Section 389 of Cr.PC deals with suspension of sentence pending appeal and release of the convicts on bail. In ***Phool Chand v Union of India*** [2000 (3) SCC 409], the Supreme Court observed that though parole has

different connotation than bail, the substantial legal effect of the bail and parole is to release a person from detention or custody. There is no statutory provisions dealing with question of grant of parole which is generally speaking an administrative action. Parole is not suspension of sentence or period of detention, but provides convict's release from custody and changing mode of undergoing sentence.

5. In view of the judgment of Division Bench of this Court in ***Rajesh Kumar*** (supra), there does not remain any doubt that the grounds which are available for grant of parole are also available for consideration of suspension of sentence and interim bail pending appeal of the convicts in this Court. Since parole has different connotation than bail, the parole does not suspend the sentence or the period of detention. The suspension of sentence pending appeal is provided under Section 389 Cr.P.C. This specific provision provides discretion to the appellate court to suspend the sentence of the convict and releasing him on bail and the discretion that can be exercised by the appellate court is to be judicious having regard to the entire factual matrix as well as other facts and circumstances, both of the convicts as also of the victims and the society. Then for suspending the sentence of a convict and releasing him on bail, the reasons are required to be recorded in writing by the appellate court. Section 389 Cr.PC does not permit suspension of sentence and grant of bail as a matter of routine or for that matter as a matter of right. It is not only that the grounds of parole mentioned in the Guidelines would be considered by this Court while exercising discretion under Section 389. In addition, the Court would also be required to take into account the main consideration such as whether any prima facie ground is disclosed for substantial doubt about the conviction, the seriousness of the offence, the period of sentence, whether the

disposal of appeal or revision is likely to take unreasonable time. The ground of establishing family or social ties would not be available in each case for suspension of sentence and grant of interim bail to the convicts. This would all depend upon the facts and circumstances of each case.

6. The appellants are convicted of committing a serious offence of gang rape of a minor girl. Having regard to the facts and circumstances of the case and the nature of offence and the manner in which the offences were committed, this ground alone which has been taken by the appellants does not entitle them for suspension of their sentence and releasing them on interim bail. I find no merits in the application. The application is hereby dismissed.

**M.L. MEHTA, J.**

**MARCH 29, 2012**

*nd*