

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1107 of 2022

Arising Out of PS. Case No.-380 Year-2016 Thana- KOTWALI District- Patna

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AJAY KUMAR SINGH, Son of Sri Jai Narayan Singh, Resident of Village -
Ram Nagri Road More, Ashiyana Nagar, P.S.- Rajiv Nagar, District - Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Deepak Kumar, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, Addl. P.P.
For the Informant	:	Mr. Rama Kant Sharma, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 13-06-2022 Learned counsel for the appellant undertakes to

remove all the defects as pointed out by office within four

weeks after start of normal functioning of the Court.

Heard Mr. Deepak Kumar, learned counsel for the
appellant, Mr. Rama Kant Sharma, learned Senior Counsel for
the informant and Mr. Bipin Kumar, learned Additional P.P. for
the State.

The appellant in this case has challenged the order
dated 13.01.2022 passed in Cr. Appeal No. 129 of 2021 arising
out of Kotwali P.S. Case No. 380 of 2016 by the learned
Additional District and Sessions Judge-XXVI, Patna whereby
the learned Additional District and Sessions Judge has refused
to suspend the sentence and release the appellant on bail during



the pendency of appeal.

Learned counsel for the appellant has placed before this Court the impugned order dated 13.01.2022. A perusal of the order itself shows that on the date of passing of the order by the learned Additional District and Sessions Judge, the appellant had already served the sentence for about four and half years out of the maximum period of seven years which was awarded to him under Section 467 of the Indian Penal Code.

This Court fails to appreciate the rationale and reasoning provided by the learned Additional District and Sessions Judge-XXVI, Patna in taking into consideration the maximum period of sentence which may be imposed under Section 467 of the Indian Penal Code and then on that ground the rejection of the prayer for suspension of sentence and release of the appellant on bail. This Court is reminded of the Hon'ble Division Bench judgment of this Court in **Cr. Appeal (DB) No. 583 of 2015 (Suddu Kumar Vs. The State of Bihar)** wherein the broad guidelines for suspension of sentence has been provided after detail discussion on the case laws on the subject. The relevant paragraphs are quoted hereunder for ready reference:-

“(i) An appellant convicted of a criminal offence, whose appeal is pending, shall be entitled to



a favourable consideration for his liberty and grant of bail on suspension of sentence on the ground of inordinate delay in hearing of the substantive appeals because of the Court's own inability to hear the appeals. There cannot be any straight jacket formula and hard and fast rule of universal application for consideration of bail in such situation. The discretion always lies with the Court to allow or reject any plea for grant of bail during the pendency of appeal, in the background of nature of the case and other attending circumstances.

(ii) Ordinarily, if the appellant has spent half of the term of sentence in custody, in connection with a case, before conviction and after conviction taken together and his appeal is not likely to be heard on merits in near future, he should be released on bail on the ground of possible delay in disposal of the appeal.

(iii) In any event, if the appellant has remained in custody for two (2) years or more after conviction and awaiting for turn of his appeal to come for final hearing and there is no likelihood of the appeal being taken up in near future, his case for release on bail would need favourable consideration on that ground.

(iv) Barring in peculiar and exceptional circumstance, when conviction is for a period of five (5) years or less, the appellant should be admitted to bail at the stage of admission.

(v) This will, however, not apply in case of peculiar and exceptionally heinous crimes.

(vi) In order to make out a case for suspension of sentence, on the ground of delay in hearing of substantive appeals, a party will have to establish that despite effective steps having been taken by



him/her for getting the appeal heard, his prayer for expeditious hearing could not be acceded to.”

The appellant has already completed five years approximately of custody by now. In the opinion of this Court, the learned Additional District and Sessions Judge-XXVI, Patna was not justified in rejecting the prayer for bail of the appellant by considering the maximum period of sentence which could have been awarded under that provision but the fact remains that the appellant has been awarded seven years only.

Mr. Rama Kant Sharma, learned Senior Counsel for the informant has though opposed the prayer for suspension of sentence but in course of argument, learned Senior Counsel has understood that the maximum period of sentence awarded to the appellant for seven years and he has already served five years also. It is, however, his submission that learned court below may be directed to hear the appeal itself at the earliest opportunity.

In the facts and circumstances as also the submissions noted hereinabove, this Court sets aside the impugned order dated 13.01.2022 and directs suspension of sentence and release of the appellant on bail during the pendency of appeal on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-



XXVI, Patna in connection with Cr. Appeal No. 129 of 2021 arising out of Kotwali P.S. Case No. 380 of 2016 (G.R. No. 5113 of 2016).

It is expected that the learned court below shall hear the appeal on its own merit at the earliest opportunity.

This appeal stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

