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

RESERVED ON -4th SEPTEMBER, 2023
% **PRONOUNCED ON -22nd SEPTEMBER, 2023**

+ CRL.A. 382/2020, CRL.M.(BAIL) 7778/2020, CRL.M.(BAIL) 378/2023
ASHOK SINGH BHADAURIA Appellant

Through: Mr. Mohit Mathur, Sr. Adv. Mr. Rajiv
Mohan, Mr.Nishant Madan, Mr. Swapnil
Tripathi and Mr. Shivender Gupta, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Nikhil Goel, SPP with Mr. Kartik
Kaushal, Mr. Adithya Koshy Roy and Ms.
Siddhi Gupta, Adv.
Mr. Mehmood Pracha, Mr. Sanawar and Mr.
Jatin Bhatt, Adv. For complainant.

+ CRL.A. 580/2020, CRL.M.(BAIL) 8335/2020, CRL.M.(BAIL) 435/2022,
CRL.M.A. 25873/2022
KAMTA PRASAD SINGH Appellant

Through: Mr. Akhand Pratap Singh, Mr. Abhinandan
Gautam and Ms. Samridhi D., Adv.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Nikhil Goel, SPP with Mr. Kartik
Kaushal, Mr. Adithya Koshy Roy and Ms.
Siddhi Gupta, Adv.
Mr. Mehmood Pracha, Mr. Sanawar and Mr.
Jatin Bhatt, Adv. For complainant.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :



Crl.M.(Bail) No. 7778/2020 in Crl A. 382/2020

Crl.M.(Bail) No. 8335/2020 in Crl. A. 580/2020

1. The present applications have been filed under section 389 read with section 482 of the Code of Criminal Procedure seeking suspension of conviction of the appellants vide judgment dated 04.03.2020 and suspension of sentence vide order dated 13.03.2020 passed by the Ld. District & Sessions Judge (West), Tis-Hazari Courts, Delhi, during the pendency of the present appeals.
2. The appellant Ashok Singh Bhadauria (herein referred to as Appellant no. 1) has been convicted for the commission of offences under Sections 120B read with Sections 166/167/193/201/203/211/218/323/341 and 304 of Indian Penal Code, 1860 and Section 3 of the Arms Act, 1959.
3. The appellant Kamta Prasad Singh (herein referred to as Appellant no.2) has been convicted under 120B read with 166, 167, 193, 201, 203, 211, 218, 323, 341 and section 304 of the IPC; Section 3 of the Arms Act; Section 341, 323 read with section 304 of the IPC read with section 1208 of the IPC; and under section 193, 201, 203 and 211 of IPC read-with 1208 of the IPC.
4. Both the appellants have been convicted vide common judgment dated 04.03.2020 passed in R.C. No. 0062018S0009 [Crime No. 89/2018 PS Makhi, Unnao] (SC No. 446/2019) and R.C. No. 0062018S0010 [Crime No. 90/2018 PS Makhi, Unnao] (SC No. 449/2019) registered at CBI/ACB/Lucknow.



5. Learned counsel for the appellants submitted that Appellant/Convict Ashok Singh Bhadauria along with Convict Kamta Prasad Singh were sentenced to the following terms for each offence:
- I. For offence u/s 120B IPC- Rigorous Imprisonment for 5 years with fine of Rs.25,000/-, in default of payment of such fine, further imprisonment for a period of 1 year.
 - II. For offence us 166 IPC- Rigorous Imprisonment for 1 year with fine of Rs.5,000/-, in default of payment of such fine, further Rigorous Imprisonment for 3 months.
 - III. For offence u/s 167 IPC- Rigorous Imprisonment for 3 years with fine of Rs. 10,000/-, in default of payment of such fine, further Rigorous Imprisonment for 6 months.
 - IV. For offence u/s 193 IPC- Rigorous Imprisonment for 7 years with fine of Rs.25,000/-, in default of payment of such fine, further Rigorous Imprisonment for 18 months.
 - V. For offence u/s 201 IPC- Rigorous Imprisonment for 2 years with fine of Rs.5,000/-, in default of payment of such fine, further Rigorous Imprisonment for 6 months.
 - VI. For offence us 203 IPC- Rigorous Imprisonment for 2 years with fine of Rs.5,000/-, in default of payment of such fine, further Rigorous Imprisonment for 6 months.
 - VII. For offence u/s 211 IPC- Rigorous Imprisonment for 7 years with fine of Rs. 10,000/-, in default of payment of ssh fine, further Rigorous Imprisonment for 18 months.
 - VIII. For offence u/s 218 IPC- Rigorous Imprisonment for 3 years with fine of Rs.5,000/-, in default of payment of such fine, further Rigorous imprisonment for 6 months.
 - IX. For offence u/s 323 IPC- Rigorous Imprisonment for 1 year with a fine of Rs.1,000/-, in default of payment of such fine, further Rigorous imprisonment for 3 months.
 - X. For offence w/s 341 IPC- Rigorous Imprisonment for 1 month with fine of Rs.500/-, in default of payment of such fine, further Rigorous Imprisonment for 7 days.
 - XI. For offence us 304 Part-II IPC- Rigorous Imprisonment for 10 years with fine of Rs.25,000/- each, in default of payment of such fine, further Rigorous Imprisonment for 24 months.



XII. For offence u/s 3 r/w S. 25 of the Arms Act- Rigorous Imprisonment for 3 years with fine of Rs, 5,000/-, in default of payment of such fine, further Rigorous Imprisonment for 6 months.

6. Learned counsel for appellant no. 1 has submitted that for the offences under sections 120B, 166, 167, 201, 203, 218, 323, 341 of IPC and u/s 3 r/w Section 25 of Arms Act, the appellant has already undergone the entire sentence.
7. Learned counsel has submitted that for the offence under section 193 of IPC, the conviction is not justified because the basic requirement of taking cognizance is filing a complaint under section 195 of CrPC. It is an admitted case of CBI that the cognizance was not taken on any complaint as the same was never filed.
8. Learned counsel has further submitted that the offence at Serial No. VII i.e. w/s 211 IPC, this offence speaks about the punishment for a “false charge of offence made with intent to injure”. The CBI’s case before the Ld. Trial Court is that this false charge of Section 25 Arms Act was levelled against the deceased Surender Singh @ Pappu Singh by Accused Shailender Singh @ Tinku Singh and the author of this false FIR was Accused Amir Khan (posted as FIR Writer at P.S. Makhi) and both were acquitted by the Ld. Trial Court. So the conviction of the Appellant/Convict herein for offence us 211 IPC cannot be said to be justified and proper. It is submitted that the only offence that remains against the appellant is Section 304 Part II IPC for which the Appellant/Convict herein has already undergone half of the sentence awarded to him and the Nominal Role has confirmed the said aspect.



9. It is further submitted that by the common Judgment dated 04.03.2020 and Order on Sentence dated 13.03.2020, 6 Accused Persons were convicted. During the trial, a total of 55 Prosecution Witnesses were examined besides exhibiting a lot of documents. Hence, considerable time will be required for appreciation of all the evidence and deciding the Appeal on the basis of the merits of this case. The Appellant/Convict herein has already spent half of his sentence for the offence u/s 304 Part II IPC.
10. It is submitted that the Ld. Trial Court awarded the maximum punishment prescribed for the offence u/s 304 Part II IPC without giving any reason to award the maximum punishment and imposed this sentence. Further, it is an admitted case that CBI filed the Chargesheet bearing RC No. 10(S)/2018 against 4 accused Persons namely, Vineet Mishra @ Vinay Mishra, Birendra Singh @ Bauwa Singh, Ram Sharan Singh, Jai Deep Singh @ Atul Singh and Shashi Pratap Singh @ Suman Singh for the offence u/s 302 IPC and all the convicts faced the trial for the offence u/s 302 IPC but CBI failed to prove the charge under the said offence and hence all the accused Persons were acquitted of the offence u/s 302 IPC and were convicted for offence u/s 304 Part II IPC.
11. Learned counsel has further submitted that against the Appellant/Convict herein, the Chargesheet bearing R9(S)/2018 was filed only for the offences u/s 120B r/w 166, 167, 193, 201, 218 of IPC and section 3 & 25 of the Arms Act.
12. It is submitted that during the trial, Supplementary Chargesheet was filed by CBI in RC No 10(S)/2018 for the offence u/s 120B, 302 IPC



only against the convict Kuldeep Singh Sengar but not against the Appellant/Convict herein. In this manner, from the date of registration of the FIR till the conclusion of the Trial, the CBI did not file any chargesheet against the Appellant/Convict herein or the offence u/s 302 IPC.

13. Learned counsel submitted that from the observations of the Ld. Trial Court, none of the accused persons caused any injury to commit the death of the deceased Surender Singh @ Pappu Singh and that the Appellant/Convict during the whole of the incident had not used any weapon to inflict injuries rather his role remained only to leg kicks and fist blows.
14. Furthermore the learned counsel had submitted that for the offence u/s 304, Part II speaks only about the aspect of "knowledge". As per the provisions of IPC, Section 34 speaks about sharing of common intention and S. 35 speaks about sharing common knowledge but there is no provision under the head of conspiracy by which an agreement to commit the offences with individual knowledge can be arrived.
15. It is further submitted that in the present case, the accused persons were not convicted with the aid and assistance of Section 35 IPC and the knowledge aspect was only confined to the accused person who did the active act and not against the accused persons who did not participate in the commission of any assault.
16. It is furthermore submitted that for the regular suspension of sentence, reliance can be placed upon *Rahul Kanojia v. State & Anr.* (2022) SCC OnlineDel 4512 where under similar circumstances, the regular sentence was suspended by this Hon'ble Court.



17. The learned counsel for Appellant No. 2 has submitted that the Appellant has already undergone more than half of the total (more than 5 years) out of the total 10 years imprisonment. It is submitted that the Appellant was admitted on interim bail by this Hon'ble Court and he had surrendered within the stipulated time, further, there is no allegation of any violation of any of the terms and conditions imposed in the interim suspension of sentence order. There is not a single allegation against the Appellant regarding violations of any jail manual during the last 5 years since the date of his arrest in the present case.
18. It submitted that the Appellant was admitted on regular bail by the Hon'ble High Court of Allahabad (Lucknow Bench) when the case was being investigated by CBI. The appellant was on regular bail for more than 5 months and even in that period there is no allegation of violations of any of the conditions of the bail.
19. The Appellant was never arrested by CBI during the course of the investigation in the present case. He was taken into the Judicial Custody by the Ld. Trial Court only after clubbing of the FIRs. There is no likelihood of the present appeal to be disposed of, as other appeals mucholder are pending before this Hon'ble Court.
20. Learned counsel has further submitted that the trial court in the present case has erroneously observed that the Appellant registered the FIR against the victim Pappu @ Surender Singh without conducting any preliminary inquiry in furtherance of a conspiracy with other accused persons, however in terms of section 154 Cr.P.C., whenever any complaint is received mentioning about cognizable offences, police is duty bound to register an FIR.



21. It is further submitted that the trial court has erroneously observed that the Appellant was present at the spot on 03.04.2018 at the time of the incident without considering the following pieces of evidence that point to the contrary.
- a) Because CBI in the Charge Sheet claimed that Appellant reached the spot on one Bullet motor Cycle. Yet, there was no investigation by the CBI on the motorcycle.
 - b) Because PW-22 Uma Shanker Pandey (alleged eye witness) did not mention about Appellant's presence in the deposition before the Ld. court on 16.09.2019
 - c) PW-42 Asha Singh and PW-43 Sonali have lied about witnessing the incident. Further, PW-43 Sonali wrongly identified the Appellant in the courtroom. (CBI in their charge sheet submitted before Ld. Trial Court disbelieved the version of PW-42 Asha Singh and PW-43 Sonali).
 - d) The complaint given to the District Magistrate, Unnao, and Superintendent of Police, Unnao by PW 42, finds no mention of any police Jeep and/or the role of any policemen in the alleged incident of 03.04.2018.
 - e) One more complaint by 'AS' (Victim in RC 85/2018) was handed over to the Chief Minister is also silent about the role of policemen.
 - f) Because the trial court did not acknowledge the testimony of PW-27 Kishore Kumar Mishra, being an injured eye-witness, did not state that he was taken to PS Makhi in a police jeep.
 - g) PW-53 Ravi Kumar NG was visited by PW-42 Asha Singh and PW-43 Sonali, they handed over a complaint that is Ex.PW-43/B. He deposed that "nothing was told by Smt. Asha Singh at that time regarding the role of the police in the beatings given to her husband."
 - h) It is an admitted fact that there is only one police jeep in PS Makhi and there is no other car/bike attached to the police station.
 - i) As per GD No. 24 at 1030 hours, SO A-2 Ashok Singh Bhaduria left PS Makhi in the only vehicle of the PS. He returned to PS Makhi vide GD no. 50 at 1835 hours.
22. It is further submitted that the trial court has erroneously observed mala fide in the conduct of the Appellant during the period when he was the IO of both FIRs. The investigation of FIR No. 89/2018 was handed over to him after the registration of the FIR, the arrest of the alleged accused, and the seizure of the *katta* through a seizure memo by the



duty officer. His conduct during the said period can be elaborated by the following evidence on the judicial record:

- a) He proceeded to the place of incident with Head Constable Bajrang Singh, but could not find anyone as it was already night.
 - b) He recorded the statement of the complainant of FIR no.89/2018.
 - c) He collected the MLC of Surender Singh @ Pappu, Bauwa Singh and Vineet Mishra.
 - d) In the case diary he has also mentioned about the number of injuries reflected in MLCs mentioned by Dr Prashant Upadhyay.
 - e) He proceeded to take the statement of Surender Singh @ Pappu in Government Hospital.
 - f) That Appellant also mentioned and recorded in his case diary dated 08.04.2018 that conflicting views are coming about the place of the incident.
 - g) That Appellant, received the copy of FIR No 90/18, MLC report in the late evening of 04.04.2018.
 - h) He recorded the statement of complainant Smt. Asha Singh, Payal, and Suryapal also made one site plan on the pointing of the complainant.
 - i) He proceeded in search of the accused but they were not present in their house. This fact is also mentioned in the case diary dated 04.04.2018 of FIR No. 90/2018.
23. It has further been submitted that the Ld. Trial Court has taken the view that Surender Singh @ Pappu was taken to the police station in a Jeep by the Appellant, but on the contrary Kishore Kumar Mishra, being an injured eye-witness, did not state that he was taken to PS Makhi in a police jeep.
24. Furthermore, the Ld. Trial court has given the observation on page 178 of the judgment that the Appellant has not recorded or interrogated the arrest of Vineet Mishra @ Vinay Mishra, Ram Sharan Singh @ Sonu Singh, and Shashi Pratap Singh @ Suman Singh however the case diary dated 04.04.2018, 05.04.2018, 07.04.2018 and 08.04.2018 show that Appellant visited village Makhi but they were not found in their house and could not be arrested due to the same reason. He made all efforts to arrest the same with the resources available to him.



25. It is further submitted that it is an admitted fact that there was only one Official Jeep in PS Makhi and SurenderSingh was first sent to hospital alone for medical treatment as was having moreinjuries. As both Vineet Mishra @ Vinay Mishra and Bauwa Singh were allegedlyassaulted by Surender Singh due to the same reason to avoid any further conflict itwas decided that they would be sent for MLC later on once Surender Singh is sent tohospital.
26. It is further submitted by the Ld. Counsel that the CDR of Kishore Kumar was never partof the Judicial Record. Also when Kishore reached PS Makhi he was taken to the hospitalwhere he was found to be in an inebriated condition. He never disclosed that he camewith Surender to village Makhi. On the subsequent dates of the incident further theAppellant had visited the complainant's home multiple times to take the witness's statement however he was not found there. On 08.04.2018 Appellant was suspendedlater and there was no occasion for him to record the statement of PW-25thereafter.
27. The Ld. Trial court held that the Appellant did not examine anyone in the village Makhito ascertain the veracity of the allegations. It is evident from the Case Diary dated 08.04.2018 that Appellant herein recorded the statement of one Kallu s/o Lallu and Shivraj s/o Ramlal. It is pertinent to mention that both the witnesses gave a contrary version of the complainant's version but the Appellant still recorded the same in want of fair investigation.
28. It is further submitted by the learned counsel that the Ld. Trial court further held that the Appellant did not make an endeavour to verify theversion of the incident from the victim Surrender Singh @ Pappu



Singh on 03.04.2018 or on 04.04.2018. The statement of Surrender Singh @ Pappu was recorded on 04.04.2018 in the presence of SI Sushil Kumar and it is also mentioned in the case diary. In his statement before the Appellant, Surrender Singh @ Pappu stated that he would give his statement only before the Magistrate. Further, It is also admitted that on 04.04.2018 when Surrender Singh @ Pappu was presented before the magistrate he was duly represented by his counsel who even moved one application qua proper medical treatment to Surrender Singh @ Pappu.

29. It has further been submitted that as per the trial court, the case diary Ex Pw-10/D-2 to D-4 were not produced before ACJM, Unnao when the matter came up for hearing on the bail application of victim Surrender Singh @ Pappu Singh during the hearing of his bail application. However, the case diary of 04.04.2018 was duly presented before the magistrate for his perusal and the same was endorsed by him too. Further, there was no occasion for the Appellant to produce the case diary of 07.04.2018 when the bail application was listed as the Appellant did not visit the Unnao Court on that day. He had sent a copy of the status report before the Court through the proper channel.
30. Further, it is submitted that it is not even the case of the CBI in their charge sheet that the Appellant at any time fabricated case diaries of the present case. Further, no PW has also not stated anything about the fabrication of case diaries by the Appellant.
31. Learned counsel for Appellant No. 2 has submitted that the Ld. Trial Court has used the calls exchanged between the Appellant and Kuldeep Sengar erstwhile MI-A as a sign of the Appellant's



involvement in the larger conspiracy, however, there were calls being exchanged between Pw53, Pw54, Pw31, Dw1, Dw4 and Dw-5 and the Appellant and Kuldeep Singh Sengar due to a law and order situation in Puranispasari under the jurisdiction of PS Makhi. The said situation has been corroborated by all the aforementioned witnesses.

32. It is submitted that the Ld. Trial Court has erroneously taken the view that the Appellant never bothered to seek any clarifications from the doctors attending to the victim as to whether or not he was "fit to be discharged" from the hospital. An opinion of the medical board of 6 doctors from AIIMS dated L4.06.2018 opined that "Thus, considering the above facts, the medical board opines that the deceased Mr. Surendra Singh was in a fit condition to be discharged on 04.04.2018." Moreover, the deceased's discharge slip was prepared by Dr. Manoj Kumar and Dr. GyanPrakash and despite them being on the list of witnesses of the charge sheet, CBI did not examine them in the Court. In their statement, u/s 161 Cr.P.C. they have categorically stated that there was no pressure from anyone to get the deceased discharged from the hospital.
33. It is also submitted that the Ld. Trial Court has wrongly opined that the Appellant was the architect of the Judicial remand of the victim, it is submitted in that regard that the Ld. Trial was of the opinion that if the deceased was not sent to judicial custody he could have survived. It is submitted that first of all sending deceased to the judicial custody was under the order of the learned Magistrate of 04.04.2018. It is further submitted that a copy of the MLC of the deceased was annexed with the case diary and it was looked over by the magistrate and signed also.



34. Further, the Appellant had hidden or not placed any document before the magistrate for his perusal when an application was moved to send the deceased in judicial custody.
34. It is submitted that the Ld. Trial court failed to appreciate that there was no evidence against the Appellant that indicated conspiracy between the Appellant and the other co-accused persons. The Ld. Trial court Ignored the fact that according to the CBI, no case was made out against the Appellant in RC 105/2018 because no culpability could be attributed to him with respect to the unnatural death of the victim. It is submitted that the Trial Court failed to appreciate that not a single question u/s 313 CrPC was put up to the Appellant regarding his involvement in the conspiracy with other accused and their common object was to commit the murder of victim Surender Singh @ Pappu Singh.
35. It is also submitted that the Ld. Trial Court failed to appreciate the version of the family members that beating to deceased started in the house however PW-54, IO Insp Anil Kumar in his cross examination has categorically stated that no incident happened in the residential compound of the victim. Moreover, the version of the family member that the deceased was beaten by getting tied to a Neem tree is also false as stated by family members.
36. The Ld. Trial Court failed to appreciate that in the site plan dated nowhere the house of the deceased Pappu Singh is shown in the close vicinity of the house of the Uma Shankar Pandey PW-22 and Shubham Pandey PW-21. It is pertinent to mention here that PW-21 in his deposition before the Ld Trial Court categorically stated that the



distance between his house and the house of deceased is 100-150 meter awayhis house, contrary to the versions of the Victim's family.

37. The Ld. Trial couft has disbelieved the facts arrived at during the investigation of CBIand has followed the testimonies of the victim's family blindly.
38. That none of the alleged eyewitnesses in their deposition before the Ld. Trial Court stated that they ever saw the family members of Pappu Singh when he was allegedly assaulted. None of the alleged eyewitnesses even stated that they even saw PW-27 Kishore getting assaulted.
39. The Trial court did not consider the fact that the Victim had no prior plans to visit his family in Makhi Village, which nullifies the chances of their being a pre-existing Conspiracy between the accused persons.
40. That the family of the victim attempted to falsely impute charges of molestation against some of the co-accused persons. PW-48 Mahesh Singh in his cross-examination dated 25.10.2019 had stated “It is correct that in the said conversation I told Sonali to self-inflict certain injuries on their bodies (inner parts).”
41. It is further submitted that the Appellant has been falsely implicated by the family of the victim at the behest of the brother of the victim as the Appellant being the Halkain charge of Makhi village was the IO in cases registered against him. There are recorded conversations between PW-48 Mahesh Singh and the Appellant, where the Appellant can be heard requesting the family members of the victim to join the investigation, and neither do they disclose any anger or anxiety on the part of the PW against the alleged misdeeds of the Appellant.



42. Lastly, the learned counsel submits that the Ld. Trial court erroneously opined that media bite of the victim was a dying declaration however No questions were put to either Appellant or any other accused in his 313 Cr.P.C.statement. Further the original video coverage/interview was spanning for about 1.30 minutes. It is submitted that PW-50 was not actually the maker of the video and actually his cameraman was the competent person to give certificate u/s 658 IEA. It is further submitted that the certificate given by PW-50 says that no addition/deletion/editing has been done by him but in his cross examination he categorically admits that “I had conducted the editing of the video footage on my own laptop.”

SUBMISSIONS ON BEHALF OF CBI

43. Learned counsel for the Respondent submitted that the present appeals arise of common judgement in SC No.446 & 449 of 2019 wherein the Ld. Spl Judge has convicted all seven appellants under Sections 120-B r.w 166, 167, 193, 201, 203, 211, 218, 323, 341 & 304 (Part II) of IPC and Section 3 of Arms Act and sentenced under the aforesaid provisions maximum RI of 10 years. The two RC's being RC 9 & 10 resulted in two different chargesheets. RC No.9 was filed for the offences u/s 120B r/w 166, 167, 193, 201, 218 IPC and s. 3 & 25 of the Arms Act against 11 accused persons (including the two present appellants and RC No. 10 was filed under s. 120-B r.w 302 IPC against 4 accused persons. However, the common judgement was passed upon the joinder of charge. It may be noted that order on joinder of charge was carried up in revision by the Appellants and the same was rejected by a detailed order passed by this Court in Crl. Rev. Pet. No. 865/19.



44. It submitted that the wife of the deceased victim sought to register an FIR in the case pertaining to rape of her daughter by Kuldeep Singh Sengar, and hence she filed an application u/s 156(3) of the Cr.P.C. On 03.04.2018, the deceased victim came to Unnao (from Delhi which was his place of work) to pursue this application. After the hearing in this case on 03.04.2018, the victim was inebriated. The present appellants along with others were travelling from Unnao to Kanpur in two cars. One car had A-10 (Jaideep Sengar) and the other had the appellants along with A-6 and PW30.
45. Learned counsel for the respondent submitted that A-8 (Shahshi Pratap Singh @ Suman Singh) encountered the victim along with the victim's co-worker PW27, when altercation ensued between the two. A-8 then called A-6 (Birender Singh @ Bauwa Singh) saying that the victim was hurling abuses at A-3 (Kuldeep Singh Sengar) and A-10 (Jai Deep Singh @ Guddu Singh), who was travelling in the same car. The appellant then called A-10, and upon his instruction both cars turned back towards Village Makhi.
46. It is further submitted that the case of the prosecution is that the victim (along with his co-worker) after his initial encounter with A-8, was given a lift by PW28. Victim and PW27 then alighted near the house of one Ravi Pandey. It is the case of the prosecution that at this place, A-10 was already present along with the appellant and other co-accused. At this point, the victim and PW27 were beaten up by the appellant along with the other co-accused, and dragged towards the house of A-10/A-3 all the while beating up the victim. At this point, A-1 and other police officials reached the house of A-3/A-10 where the victim was



being beaten up. The victim was then taken to the police station where a country made pistol was planted on him and false FIR was registered against him at the official residence of A-2 (Kamta Prasad).

47. It is submitted that the Prosecution also averred that A-1 (Ashok Bhaduarua) also connived with co-accused to hoist a false FIR against the victim. Thereafter the victim was brought to police custody where he eventually succumbed to his injuries. In RC 10(S), 302 IPC was added after the death of the victim in hospital.
48. Para 24: PW23 (Doctor) testified that he went to the house of A-10, where he was told by the said accused to inflict injuries on the person of the appellant and the other accused A-6 (in support of the false FIR having been registered against the deceased victim - contents of false FIR mentioned at para 5).
49. Para 31: PW11 stated that then appellant herein, along with other coaccused knowing the seizure memo Ex-PW-9B to be false, signed the same as witnesses. The said seizure memo depicted recovery of country made gun from deceased victim. This was part of the larger conspiracy to lodge false FIR against the deceased victim.
50. Para 106: PW42 (wife of the deceased victim) stated that the appellant along with other co-accused barged into the house of the victim, and started assaulting him. It has been further stated that the assailants dragged him out of the house and continued beating him till the house of A-10, where he was beaten again.
51. Para 109: PW43, daughter of the deceased victim, corroborated her mother's story. In Para 112 she further stated that her father was tied to



the neem tree in A-10's yard and assaulted by the appellant and his coaccused,

52. Para 121: PW48(brother of the deceased victim) stated that he received a call from his mother stating that the appellant along with other coaccused had set course towards Village Makhi to assault the deceased victim.
53. Para 123: PW27 (friend of the victim who was beaten up along with the deceased victim, hence the most natural witness to the entire incident) testified and corroborated the version of PW42 and PW 43. He states that the victim was dragged out of his house and later on beaten up by the accused.
54. Para 210: Conclusion: The Ld. Trial Court has reached finding that the injuries caused to the victim were sufficient to cause death. It was held that the prosecution has proved its case beyond reasonable doubt. Specific findings against the present appellants in para 210(iii) &(vii) was to the effect that they reached the spot when beatings were being given to the victim and they neither intervened nor did they try to save the victim.Later on, the victim was brought to the police station, where a false case was registered against him.
55. Learned counsel for the respondent submitted that the very conviction of Appellants' Ashok Singh Bhadauria (A-1) & Kampta Prasad (A-2) in RC 9 & 10 is for the offence of causing the death of a witness in a rape and murder case. The entire case of the prosecution in the present case has been to the effect that the appellants being seasoned police officials, in connivance with other accused in the present case attempted to influence a rape victim's father and tampered



with evidence, being police officials, they even went to the extent of foisting a false case on the deceased victim and later on turned blind eye to merciless beatings being given to the victim which ultimately led to his death.

- 56.** It is submitted that the appellant Ashok Singh Bhadauria did not record the statement of anyone in the village with regard to the veracity of the allegations against the deceased victim made by the co-accused while filing the false FIR. Further, at the time of bail hearing of the deceased victim in the false FIR, the appellant suppressed the information regarding the injuries found on the body of the deceased victim.
- 57.** It further submitted that appellant no. 1 had fabricated case diaries to cover the tracks of his co-accused who had beaten the deceased victim. The call records show that the appellant was in constant contact over telephone, being dictated as to what color the beating of the deceased victim had to be given. It is also submitted that appellant no 1 was instrumental in knowingly lodging false FIR against the deceased victim and in fact committed the deceased victim in remand, without ascertaining from the doctors whether he was medically fit for police remand or not.
- 58.** It is further submitted that the appellant had reached the spot at the time when the beatings were given to victim Surender Singh @ Pappu Singh and he neither intervened nor savedd the victim from the clutches of the assailants, and allowed a free hand to the assailants to parade the victim through the village Makhi.
- 59.** It is further submitted that the Facts and circumstances brought on the record prove beyond reasonable doubt that thereafter, the appellant no.



1 along with other accused persons hatched another crucial part of the conspiracy to foist a false case upon victim Surender Singh @ Pappu Singh by planting a country made gun Ex. P-1 and four cartridges Ex. P-2 in his name. Appellant Ashok Singh Bhadauria even allowed the protective police cover affording them a free hand to do what they did. The assailants along with the appellant were involved in a concerted action to pursue the “unlawful common object” and when the assault on victim Surender Singh @ Pappu Singh was over, he was brought to the Police Station along with other injured PW-27 Kishore Kumar Mishra in the police Jeep Bolero.

60. Learned counsel for the respondent submits in respect to the appellant Kamta Prasad Singh that Appellant did not record the statement of the co-accused who had come to the police station for registering a false FIR against the deceased victim. It submitted that the appellant did not record the statement of anyone in the village with regard to the veracity of the allegations against the deceased victim made by the co-accused while filing the false FIR.
61. It is further submitted that at the time of bail hearing of the deceased victim in the Ease FIR, the appellant suppressed the information regarding the injuries found on the body of the deceased victim. Further, the Appellant fabricated case diaries to cover the tracks of his co-accused who had beaten the deceased victim
62. Learned counsel has relied on the call records that show that the appellant was in constant contact over telephone with co-accused Kuldeep Sengar and was being dictated as to what color the beating of the deceased victim had to be given. It is submitted that the appellant



was instrumental in knowingly lodging false FIR against the deceased victim and in fact committed the deceased victim in remand without ascertaining from the doctors whether he was medically fit for police remand.

- 63.** It is submitted that the Appellant Kamta Prasad Singh had reached the spot at the time when the beatings were given to victim Surender Singh @ Pappu Singh and he neither intervened nor saved the victim from the clutches of the assailants, and allowed a free hand to the assailants to parade the victim through the village Makhi.
- 64.** Learned counsel for the respondent further submitted that the Facts and circumstances brought on the record prove beyond reasonable doubt that thereafter, the appellant along with other accused persons hatched another crucial part of the conspiracy to foist a false case upon victim Surender Singh @ Pappu Singh by planting a country made gun Ex. p-1 and four cartridges Ex. P-2 to P-5.
- 65.** It is submitted that even appellant No. 2 Kamta Prasad Singh allowed the protective police cover affording them a free hand to do what they did. The assailants along with appellant were involved in a concerted action to pursue the "unlawful common object" and when the assault on victim Surender Singh @Pappu Singh was over, he was brought to the Police Station along with other injured PW-27 Kishore Kumar Mishra in the police Jeep Bolero.
- 66.** It also submitted that the exchange of call records as between A-3 and A-1 and appellant in the whole context of the incident lead to conclusion that even away from village Makhi, accused Kuldeep Singh Sengar (A-3) was pulling all the strings and in conspiracy with



policemen A-land appellant, involved the victim Surender Singh @ Pappu Singh in a false case of possession of illegal fire arms.

67. Mr. Mehmood Pracha, learned counsel for the complainant has also opposed the grant of suspension of sentence/bail on the grounds that offence for which the appellants have been convicted are grave in nature and if their sentence is suspended they may not attend the trial, may further commit the offence qua the complainant and other members of the family.

68. Section 389 reads as under:

“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.

(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.”

69. In ***Rahul Kanojia vs The State & Anr., 2022 SCC OnLine Del 4512***

this Court was considering the application for bail as inter alia held as under:



"6. A perusal of the aforesaid provision reveals that 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 the sentence or order appealed. If the appellant is in confinement, the concerned court can direct that he be released on bail or on his own bond requirement of recording reasons in writing clearly indicates that there ought to be a 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. It is only in exceptional cases that the benefit of suspension of sentence can be granted. The reasons indicated must be germane to justify the suspension of sentence or grant of bail. 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. Thus, what really is necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. [Refer Anil Ari vs State of West Bengal dated 09.02.2009, Crl. A 000239/2009 arising out of SLP (Crl) No. 006513/2008; Vasant Tukaram Pawar vs State of Maharashtra, Crl A 558/2005)]."

- 70.** The appellant no. 1 in the present case as per Nominal Roll had undergone for sentence for four years eight months and seven days approximately, and Appellant no. 2 has under gone four years five months and 28 days approximately.



71. In *Kashmira Singh vs. State of Punjab*, it was inter alia held as under:
- “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.”*
72. It is also a settled proposition that for the conviction custody in cases other than life sentence cases, the broad parameter of 50% of the actual sentence undergone can be the basis for the grant of bail. Reference can be made in *Saudan Singh vs. State of U.P.* 2021 SCC OnLine SC 3259.
73. It is a settled proposition that though the Court at this stage of suspension of sentence is required to examine if there is any infirmity in the order of the conviction that renders circumference prima facie erroneous however, evidence is not to be reassessed or reanalyzed for suspend the execution of sentence. As in caution, the detailed observation on the merits of the case is not called for at this stage, as it



may prejudice the case of the parties. Reliance can be placed upon *Anil v. State, CRL. A. 7291/2019, CRL.M (Bail) 8236/2020*.

74. At this stage, keeping in mind, the pendency of cases on sentence already undergone by the accused persons, it is a matter of the record that an appeal in the case was admitted on 31.07.2020 however, the Court is not been able to hear it. It is also a matter of the record that the appellants did not misuse the liberty of interim bail granted to them from time to time. As per Nominal Roll, appellant no. 1 in the present case had undergone for sentence of four years eight months and seven days approximately, and Appellant no. 2 has undergone four years five months and 28 days approximately and the unexpired portion is four years and nine months approximately.
75. In the facts and circumstances, and in view of the incarceration, both the appellants' Ashok Singh Bhadauria and Kamta Prasad Singh are admitted to Court bail on furnishing a personal bond of Rs.50,000/- with one surety each of the like amount to the satisfaction of the trial court, subject to the following conditions:
- a) the appellants shall attend the court hearing regularly as and when directed by the I.O.
 - b) the appellants shall not travel abroad without the permission of the Court,
 - c) the appellants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;
 - d) the appellants shall provide their mobile number(s) to the Police Officer in Charge of the case and keep it operational at all times;



e) in case of a change of residential address and/or mobile number, the appellants shall intimate the same to the Police Officer In Charge of the case / Court concerned by way of an affidavit.

76. In view of the above, the present bail applications stand disposed of.

77. Copy of this order be sent to concerned Jail Superintendent.

SEPTEMBER 22, 2023

Pallavi

DINESH KUMAR SHARMA, J

सत्यमेव जयते