

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL REVISION No.176 of 2023**

Arising Out of PS. Case No.-314 Year-2010 Thana- DINARA District- Rohtas

1. SHIVJAG PASWAN S/O HAWALPUR PASAWAN R/O VILLAGE-ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
2. RAJENDRA PASWAN S/O LATE NARAYAN PASWAN R/O VILLAGE-ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
3. UPENDRA RAM S/O HARI KISHUN RAM R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
4. SANT KUMAR RAM S/O RAJA RAM R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
5. SANMUKHA RAM S/O RAJA RAM R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
6. SUBA RAM @ SUBA PASWAN S/O LATE NARAYAN PASWAN. R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
7. SHANKAR DAYAL RAM S/O RAJA RAM R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
8. SARDAR RAM @ SARDAR PASWAN S/O YAMUNA PASWAN R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
9. HRIDAYA PASWAN S/O YAMUNA PASWAN R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.
10. RAMASHISH CHAUDHARY S/O LATE OJHA CHAUDHARY R/O VILLAGE- ARANG, P.S- DINARA(BHANAS), DISTT.- ROHTAS AT SASARAM.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Chhote Lal Mishra, Advocate  
For the Respondent/s : Mr. Akshay Lal Pandit, APP  
For the informant : Mr. Vikram Deo Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA  
CAV JUDGMENT/ORDER**

**14-09-2023**

The present revision application has been preferred by the petitioners against judgment dated 17.08.2022 passed in Cr. Appeal No. 16/2016 by learned Additional Sessions Judge-16, Sasaram, Rohtas



affirming the judgment of conviction and order of sentence dated 03.03.2016 passed by Sub-Divisional Judicial Magistrate, Bikramganj, Rohtas in GR No. 1323/10/Trial No. 820/2016 whereby all the petitioners have been sentenced to undergo SI for a period of two years for the offence punishable under Sections 379 IPC. They are also sentenced to undergo SI for a period of one year for the offence punishable under Section 147 IPC as well as further sentenced to undergo SI for a period of three months for the offence punishable under Section 447 IPC directing the sentences to run concurrently.

2. It is an admitted position that the petitioners have not surrendered after affirmance of judgment of conviction and order of sentence by the District Appellate Court. The present revision application has been filed without attaching/annexing the surrender certificate of the petitioners as required under Rules of the High Court at Patna (hereinafter referred to as the 'PHC Rules').

3. Learned counsel for the petitioners submits that learned District Appellate Court transferred the records of the case to the original court i.e., trial court of Sub-Divisional Judicial Magistrate, Bikramganj, Rohtas and the learned Sub-Divisional Judicial Magistrate, at this stage, has granted the



petitioners provisional bail for ninety days *vide* order dated 24.11.2022 to enable them to approach this Court under revisional jurisdiction. He further submits that in view of the provisional bail granted to the petitioners by the trial court for approaching this Court under its revisional jurisdiction, the petitioners are not required to surrender even though the tenure of provisional bail of ninety days is over.

4. Mr. Vikram Deo Singh, learned counsel appearing for the informant in the present case raises a preliminary objection and submits that this revisional application is not ready to be posted and heard under the heading 'for admission' by this Court on merit on the ground that neither the trial court nor the appellate court has power to grant bail when the order of conviction/sentence has been affirmed by the learned lower appellate court. He further submits that in view of Rule 57A of PHC Rules, it is mandatory upon the petitioners to surrender before their revision application could be posted 'for admission'.

5. On the basis of the submissions advanced on behalf of the parties, three questions arise for determination by this Court which are as follows:-

(i) whether the trial court is empowered to grant bail to the convicted persons after the judgment of conviction



and order of sentence has been affirmed by the District Appellate Court ?

(ii) whether the District Appellate Court can suspend the sentence and grant bail after the judgment of conviction and order of sentence passed by the trial court has been affirmed by it ?

(iii) whether as per Rule 57A of PHC Rules, the revisionist/petitioner has to surrender to custody in the concerned court before the revision petition is posted 'for admission'?

6. Insofar as question no, (i) is concerned, the relevant provision of Section 389 of CrPC is to be considered first which reads as follows:-

**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.

7. Upon perusal of Section 389 CrPC, it could be said that Section 389(1) empowers the appellate court for reasons to be recorded in writing to suspend the execution of the sentence or order appealed against and if the appellant is in confinement he can be released on bail.

8. Section 389(3) says where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the trial court may suspend the sentence and release the convicted person on bail for such period to enable him to present an appeal and seek orders of the appellate court



under Sub Section (1) of Section 389 CrPC for suspension of sentence and for release on bail.

9. Thus, it is clear that power under Section 389(3) can be exercised by the trial court if the court is satisfied that the convicted person intends to present an appeal against conviction and sentence. Learned counsel for the petitioners could not place any other provision in the Code of Criminal Procedure under which the trial court can suspend the sentence and grant bail after the judgment of conviction and order of sentence passed by the learned trial court has been affirmed by the District appellate court and the records have been sent back to the trial court.

10. In view of the aforesaid discussions, question no. (i) is answered in negative holding that the trial court is not empowered to grant bail to the convicted person after the judgment of conviction and order of sentence passed by the trial court has been affirmed by the District Appellate Court.

11. Insofar as question no. (ii) is concerned, the power of the appellate court for suspension of sentence pending appeal and for release of appellant on bail is defined in Section 389(1) of the CrPC. I could not find any provision in the Code of Criminal Procedure which empowers the District Appellate



Court to suspend the sentence after judgment of conviction and order of sentence passed by the trial court has been affirmed by it and the appeal has been disposed. There is also no provision in CrPC empowering the District Appellate Court to grant bail after disposal of appeal and confirmation of conviction and sentence to enable the appellant/convict to prefer revision application before the High Court and to obtain necessary orders.

12. Similar question had come for consideration before the Bench of Hon'ble Bombay High Court in the case of *Ikbal Chandulal Shaikh v. The State of Maharashtra (Cr. Revision Application No. 301/2022 with Criminal Application No. 3373/2022* wherein the Bombay High Court in para-12 has observed that Section 389 of the CrPC deals with suspension of sentence. The Section opens with the word “pending an appeal by the convicted persons” that indicates that the appellate court may, for reasons to be recorded in writing, suspend the sentence pending the appeal preferred by the convict. The Section, in specific words, clarified that the appellate court may suspend the sentence pending the appeal only. The suspension remains during the pendency of the appeal and as soon as the appeal is disposed of, the suspension order merges in the final judgment



and order.

13. In paragraph-14 of the said judgment, the Bombay High Court has taken note of the earlier judgment passed by it in the case of *Dilip S/O Ramchandra Umare v. State of Maharashtra 1996 CriLJ 721* which is as follows:-

“ In large number of cases, it has been found that the Sessions Judge, Additional Sessions Judge, the Joint Sessions Judge, or lower appellate court as the case may be, suspends the sentence for some time even after disposal of appeal against the conviction and sentence to enable the accused to prefer revision application before the High Court and obtain appropriate orders. The Code of Criminal Procedure does not confer any inherent jurisdiction on the lower appellate court to directly or indirectly suspend the sentence after decision of the appeal. Nor there any specific power conferred on the lower appellate court under Code of Criminal Procedure to suspend the sentence on decision of appeal against the judgment of conviction and sentence. Obviously, the power of suspension of sentence can only be exercised if the Code of Criminal Procedure so permits not otherwise. There is neither any power of suspension of sentence nor grant of bail implicit in the lower appellate court after decision of the appeal against the judgment of





the conviction and sentence nor such power is inherent. Once the lower appellate court hears and decide the appeal against the conviction and sentence passed by the trial court, it becomes *functus officio* and ceases to have any power in the matter to suspend the sentence, or grant bail even temporarily to enable the accused to approach High Court by filing revision application and to obtain appropriate orders from High Court.”

14. The judgment of Punjab & Haryana High Court in the case of *Krishna Kumar Jain v. State of Punjab (CrMM 34325-2015 in CRR 3960-2015 CrRn-3373-22-J.odt (O&M)* has been relied upon and in paragraph 17 thereof, the Punjab & Haryana High Court has held that “*The only course available, therefore, would be to execute the order of conviction confirmed by it, leaving the accused to obtain suspension of sentence and bail from the High Court by preferring appropriate revision.*”

15. In yet another judgment reported in *1995 SCC Online Bom 263*, the Bombay High Court has held that “the appellate court while dismissing the appeal is not empowered to suspend the sentence or grant bail after its decision in appeal to enable the accused to approach the High Court in revision application, the Code of Criminal Procedure does not confer any



jurisdiction on the lower appellate court to directly or indirectly suspend the sentence after decision of the appeal against conviction. Nor there is any specific power conferred on the lower appellate court under Code of Criminal Procedure to suspend the sentence on decision of appeal against the judgment of conviction and sentence. Once the lower appellate court hears and decides the appeal against conviction and sentence passed by the trial court, it becomes *functus officio* and ceases to have any power in the matter to suspend the sentence, or grant bail even temporarily to enable the accused to approach High Court by filing revision application and to obtain appropriate orders from High Court. The power of the Appellate Court contained in Section 389(1) of the CrPC referred to the powers at the time of hearing and deciding the appeal and not post decision of the appeal”.

16. Taking into consideration the aforesaid discussions and judgment rendered by the various High Courts and provisions contained in CrPC, in my considered opinion the power of suspension of sentence and grant of bail can only be exercised by the District Appellate Court if there is specific provision in this regard in CrPC. The District Appellate Court can not grant bail after disposal of appeal by affirming the



judgment of conviction and order of sentence.

17. Accordingly, I arrive at the conclusion that once the District appellate court decides the appeal against the conviction and sentence passed by the trial court, it becomes *functus officio* and ceases to have any power in the matter to suspend the sentence, or grant bail for certain period to enable the accused to approach the High Court by filing revision application to obtain appropriate orders. Consequently, the question no.(ii) is answered in negative and it is held that District appellate court has got no power to suspend the sentence and grant bail after judgment of conviction and order of sentence passed by the trial court has been affirmed by it.

18. In order to answer third question, it is necessary to look into Rule 57 of PHC Rules which was inserted by C.S. No. 122 dated 23.09.1999. A question was raised earlier before the Hon'ble Supreme Court in the case of ***Bihari Prasad Singh v. State of Bihar*** reported in ***(2000) 10 SCC 346***, as to whether the High Court while exercising its revisional jurisdiction can refuse to hear or entertain the matter on the ground that the accused has not surrendered. The Supreme Court rendered the judgment upon this on 02.08.1999 holding that under provisions of Code of Criminal Procedure, there is no such requirement



though many High Courts in this country have made such provision in the respective rules of the High Court. But there is no such rule in the Patna High Court Rules. In that view of the matter the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered.

19. It appears that after the aforesaid judgment which was rendered on 02 August 1999, Rule 57A has been inserted in the rules of Patna High Court Rules on 23.09.1999. Rule 57A of PHC Rules is quoted hereinbelow for ready reference:-

“57A. In the case of revision under Section 397 and 401 of the Code of Criminal Procedure, 1973, arising out of a conviction and sentence of imprisonment, the petition shall state whether the petitioner had surrendered or not. If he has surrendered, the petition shall be accompanied by a certified copy of the relevant order. If he has not surrendered the petition shall be accompanied by an application seeking leave to surrender within a specified period. On sufficient cause being shown, the Bench may grant such time and on such conditions as it thinks fit and proper. No such revision shall be posted for admission unless the petitioner has surrendered to custody in the concerned court.”

20. In another judgment in the case of *Vivek Rai v.*



*High Court of Jharkhand* as reported in *(2015) 12 SCC 86*, the validity of Rule 159 of the Jharkhand High Court Rules was challenged before the Hon'ble Supreme Court under Article 32 of the Constitution of India on the ground of infringement of fundamental rights of the petitioners guaranteed under Article 14 and 21 of the Constitution of India by insisting them to surrender to custody before the registration of their revision for hearing. Rule 159 of the Jharkhand High Court is *pari materia* to the Rule 57A of Patna High Court Rules.

21. The Hon'ble Supreme Court upheld the validity of Rule 159 of the Jharkhand High Court Rules holding that it is well known practice that generally a revision against conviction and sentence is filed after an appeal is dismissed and the convicted person is taken into custody in the court itself. The object of the Rule is to ensure that a person who has been convicted by two courts obeys the law and does not abscond. The provision cannot thus be held to be arbitrary in any manner. The provision is to regulate the procedure of the Court and does not, in any manner, conflict with the substantive provisions of CrPC relied upon by the petitioners.

22. After taking into consideration the above proposition of law laid down by Hon'ble Supreme Court, the



question no.(iii) is answered in positive and it is held that before the revision application filed by the convicted person is posted 'for admission', the revisionist/petitioner is required to surrender to custody in the court concern.

23. In the result, the preliminary objection raised by Mr. Vikram Deo Singh, learned counsel appearing for informant is sustained and the petitioners are directed to surrender before the court concern and file a surrender certificate within a period of four weeks.

24. It is made clear that if the surrender certificate is not filed by the petitioners within the aforesaid period of four weeks, the instant revision application shall stand dismissed without further reference to the Bench.

**(Anil Kumar Sinha, J)**

Md. Perwez Alam

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