

**THE HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**Criminal Appeal No.740 of 2016**  
(Rahul vs State of Madhya Pradesh)

**Order on I.A. No.12087/2021**  
(a repeat application for suspension of sentence)

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Date of Order : **07-01-2022**

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Whether approved for reporting : **Yes**

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Law laid down :

- Principle laid down in **Dashrath**'s case<sup>1</sup> reiterated that sentence of any term of a convict cannot be suspended just because he has served half of the sentence or any particular period of the sentence but, amongst other factors, it is required to consider the merits like nature of accusation, gravity of the offence, the manner in which the crime had been committed and the desirability of the accused being released on bail after conviction.
- Section 389 of CrPC makes it clear that while granting suspension, it is mandatory for the Court to record reasons.
- Though the subsequent bail/suspension application is maintainable, there must be some material change in the facts and circumstances or the law.

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Significant Paragraph Nos. : **7, 9 and 16**

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<sup>1</sup> **Dashrath vs State of M.P.** : Cri. Appeal No.1248/2005 delivered by a Full Bench of this Court on 26.04.2017

**THE HIGH COURT OF MADHYA PRADESH****CRA No.740 of 2016**

(Rahul vs the State of Madhya Pradesh)

**Jabalpur, Dated 07-01-2022.****Per Virender Singh, J :**

Shri Manish Kumar Tiwari, counsel for applicant/appellant.

Ms. Shikha Singh Baghel, Panel Lawyer for the State.

**I.A. No.12969/2021** and **I.A. No.21835/2021** are taken up.

These are the applications for taking authorities/orders of the Supreme Court as well as of this Court on record and to consider them while passing the order on suspension application being I.A. No.12087/2021.

The I.As are allowed and the orders are taken on record.

Heard on **I.A. No.12087/2021.**

This is the **seventh** application under Section 389 of CrPC for suspension of sentence to the appellant who stands convicted under Sections 8/20(b)(ii)(C) and 8/20(b)(ii)(C) r/w 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and has been awarded imprisonment for 12 years' R.I. for each offence and fine of Rs.1,25,000/- for each offence with default stipulation.

**2.** The prosecution case is that when acting on a credible piece of information, the police raided a place, two out of the three persons present there successfully fled, while one i.e. co-accused Ayush was caught. He was found in possession of 10 kg *Ganja*. On his disclosure, the police searched the house of his associates (i.e. present applicant and other co-accused person) and recovered another 44 kg *Ganja*. Hence, total 54 kg illegal *Ganja* was recovered.

3. The fourth application (I.A. No.18299/2019) of the applicant has been dismissed on merits vide order dated 28.11.2019 while all other previous applications have been withdrawn.
4. This time the suspension has been pleaded on the sole ground of period of custody. According to the Id. counsel, out of the 12 years' sentence awarded, the applicant has already suffered 07 years 07 months and 23 days.
5. Perusal of the order sheets would reveal that considering 7 years custody period, the sixth application (I.A. No.8738/2020) of the applicant was disposed off with a direction to file an application for early hearing which may be considered sympathetically, but no such application has been filed, instead the applicant chose to file suspension application again.
6. When offered to argue the appeal finally today, the Id. counsel for the applicant retreated his steps citing the reason that he needed to seek instructions from his client.
7. With regards to the ground taken by the applicant this time, discussing a series of judgements and orders of the Hon'ble Supreme Court as well as of various High Courts delivered from time to time on the issue, the Full Bench of this Court in **Dashrath vs State of M.P.** (Cr.A. No.1248/2005) delivered on **26.04.2017**, has held that sentence of any term of a convict cannot be suspended just because he has served half of the sentence or any particular period of the sentence. It has been concluded that while considering suspension, the Court, amongst other factors, is required to consider the nature of accusation made against the accused, gravity of the offence, the manner in which the crime is

alleged to have been committed and the desirability of the accused being released on bail after conviction.

8. Reference of Section 389 of CrPC would be apt here, which 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:*

*Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:*

*Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.*

*(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.*

(Emphasis supplied)

9. A simple and plain reading of this Section makes it clear that while granting suspension, it is mandatory for the Court to record reasons. In the judgements of **The State of Haryana v. Hasmat, (2004) 6 SCC 175**, **State of Maharashtra v. Madhukar Wamanrao Smarth, (2008) 5 SCC 721**, **Kishori Lal v. Rupa, (2004) 7 SCC 638** and **Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281** (also referred to in **Dashrath's case** supra), the Apex Court has uniformly laid down that one of the essential ingredients of Section 389 Cr.P.C is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of sentence and the requirement of recording reasons clearly indicates that there has to be careful consideration of relevant aspects. In the above context, the reasons refer to reasons which justify the suspension of sentence in all judicial senses. Term of jail served may be one of the reasons in a given case but may not justify the conscious of the Court to decide the prayer of suspension without consideration of the evidence produced on record, its quality and reliability, the nature and gravity of the offence, the manner and method in which it has been committed, its impact over the society or the public at large, the object of the law in dealing with the crime, the special enactment

introduced to curb the menace etc. and peculiar facts and circumstances of any particular case.

**10.** No straight jacket formula can be applied in all cases that after completion of half of the sentence awarded, the convict is entitled for suspension in each and every case. Neither the law nor the Hon'ble Supreme Court has ever intended this in any of its verdicts delivered so far.

**11.** It is the duty of the Courts to consider both sides of the coin. Much hue and cry is being made in today's times in the name of Human Rights of the convicts, but while the Courts are fully conscious to their human rights, they must also consider the Human Rights of the victims, whose responsibility has been taken by the State and do not have much say in the system. It is the Courts who should take the responsibility to maintain a balance between the rights of the oppressor and the rights of the sufferer. Granting suspension without assigning any reason, simply on the basis of period of term completed, can never satisfy or justify a judicial conscious.

**12.** By way of I.A. No.12969/2021, the ld. counsel for the applicant has cited orders of the Supreme Court, being order dated 27.09.2004 passed in Special Leave to Appeal (Cri.) No.3117/2004 (**Mansingh vs Union of India**), order dated 19.02.2018 passed in SLP(Cri.) No.861/2018 (**Mayuresh Nandkumar Purohit vs Kaushik Manna**) and order dated 13.07.2021 passed by Division Bench of this Court in Criminal Appeal No.1536/2018 (**Gopaldas & ors. vs State of M.P.**). And, through I.A. No.21835/2021, the applicant further cited order

dated 17.11.2021 passed by Division Bench of this Court in Criminal Appeal No.782/2013 (**Saiyad Sasheb Ali & ors vs State of M.P.**), order dated 04.12.2021 passed by Single Bench of this Court in Criminal Appeal No.2641/2021 (**Mukesh vs State of M.P.**), order of Supreme Court dated 21.01.2013 passed in SLP(Cri.) No.9180/2012 (**Ramnik Singh vs Intelligence Officer**) and judgment in **S. Kasi vs State** reported as 2020 SCC Online SC 529.

13. In the orders rendered in **Mansingh, Mayuresh Nandkumar Purohit** and **Ramnik Singh's** case, the Hon'ble Supreme Court granted suspension considering the overall facts of each case coupled with the period of custody. None of the orders lay down any invariable rule for grant of suspension on completion of a specific period of custody. Similar is the situation with the orders of this Court cited supra. Besides, the law laid down by a Full Bench in the case of **Dashrath** (supra) has not been brought to the notice of co-ordinate Bench of this Court while considering suspension application of the applicants therein. Therefore, the orders cited by the applicant are of no avail to him.

14. **Thus, we have no hesitation to say that suspension cannot be granted by simply observing that the appellant has completed half of the sentence or any particular term of the sentence.**

15. In the present case, the suspension is sought for only on the ground that the applicant has completed half of the sentence that too in a case of recovery of huge commercial quantity of contraband and when on merits, this Court has already dismissed

his application on several occasions. Therefore, in the considered opinion of this Court, no case for granting suspension is made out.

16. Though, there is no doubt that the subsequent bail /suspension application is maintainable, there must be some material change in the facts and circumstances or the law. The parameters to be observed by High Court while dealing with the successive application for suspension of sentence and grant of bail have been considered by the Apex Court in **Kalyan Chandra Sarkar vs Rajesh Ranjan (2005) 2 SCC 42** wherein it is held :

*“19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.*

*20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires*



*the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country.”*

17. Therefore, in view of the aforesaid, it is not open to the aggrieved person to file successive bail application on the ground already rejected by the Court earlier without any fresh material, factual or legal. Granting bail by reconsidering the same grounds and by substituting its subjective satisfaction practically overrules findings of the Court recorded in the earlier order and obviously this is not permissible.

18. Except the period of custody, no other material change in the facts and circumstances has been pointed out by the learned counsel for the applicant, therefore, **I.A. No.12087/2021** stands **dismissed**.

19. Being an admitted appeal, let it be listed for final hearing in due course.

**(Smt. Anjali Palo)**  
**Judge**

**(Virender Singh)**  
**Judge**

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