

2025 LiveLaw (SC) 1087

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.B. PARDIWALA; J., K.V. VISWANATHAN; J.
10 NOVEMBER, 2025

CRIMINAL APPEAL NO.4804/2025 (@Special Leave Petition (Crl.) No.15688/2025)

CHHOTELAL YADAV *versus* STATE OF JHARKHAND & ANR.

Code of Criminal Procedure, 1973 – Section 389 – Suspension of Sentence – Life Imprisonment – Held, the appellate court, while considering the plea for suspension of sentence of life imprisonment, must ensure that the convict is in a position to point out something very palpable or a very gross error in the judgment of the Trial Court on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed and he be acquitted - The High Court failed to follow well-settled principles. It should have given a fair idea of the prosecution case, the type of evidence led, and the nature of evidence against each accused before exercising discretion - The High Court committed a serious error by suspending the sentence of life convicts via a cryptic order merely by recording that allegations were general and omnibus, without discussing the nature of evidence or the role of the accused as members of an unlawful assembly - Appeal allowed. [Paras 14-28]

Indian Penal Code, 1860 – Section 149 – Unlawful Assembly – When Section 149 IPC is made applicable, the Court should be mindful that all that is required to be looked into is whether the accused was one of the members of the unlawful assembly or not - Even if a particular accused has not participated in the actual assault, he could still be held guilty.

WITH CRIMINAL APPEAL NO.4805/2025 (@Special Leave Petition (Crl.) No.14816/2025) & CRIMINAL APPEAL NO.4806/2025 (@Special Leave Petition (Crl.) No.15689/2025)

[Arising out of impugned final judgment and order dated 07-05-2025 in IA No. 4953/2025 in Crl.Appeal No.195/2024 passed by the High Court of Jharkhand at Ranchi]

For Petitioner(s): Mr.Yashaswi SK Chocksey Mr. Krishna Kumar Singh, AOR

For Respondent(s): Mr. Subhro Sanyal, AOR Ms. Anki Kashyap, Adv. Mr. Sagar Roy, Adv. Ms. Nitu Sharma, Adv. Mr. Rajiv Agnihotri, Adv. Mr. Arvind Anand, Adv. Ms. Jyoti Verma, Adv. Mr. Sanjay Kumar, Adv.

ORDER

1. Leave granted.
2. Since the issues involved in all the three appeals are the same, those were taken up for hearing analogously and are disposed of by this common order.
3. These appeals filed by the de-facto complainant arise from the orders passed by the High Court of Jharkhand dated 7-5-2025 in (i) I.A. No.4953/2025 filed in Criminal Appeal No.195 of 2024, (ii) I.A. No.7257 of 2025 filed in Criminal Appeal No.191 of 2024 and (iii) I.A. No. 4952 of 2025 filed, in Criminal Appeal No.189 of 2024 respectively, by which the applications filed by the Respondents viz. Rajesh Rai, Vicky Rai and Sukhdeo Rai (convicts) respectively seeking suspension of the substance order of sentence of life imprisonment pending final disposal of their respective Criminal Appeals before the High Court of Jharkhand at Ranchi came to be allowed.

4. The High Court ordered release of all the above-named accused (convicts) on bail pending the final disposal of their respective Criminal Appeals.
5. We take notice of the fact that the convicts along with other co-accused were put to trial in the Court of Sessions Judge, Giridih, Jharkhand in Sessions Trial No. 104 of 2021, arising out of Bengabad Police Station Case No.187/2020 for the offence punishable under Sections 147, 148, 149, 325, 342 and 302 of the Indian Penal Code (for short, "the IPC") respectively.
6. At the end of the trial, all the above-named three accused were held guilty of the alleged offence and were sentenced to undergo life imprisonment with fine of Rs.10,000/- each.
7. The above-named accused persons, being dissatisfied with the judgment and order of conviction passed by the Trial Court, went in appeal before the High Court. Their appeals have been admitted.
8. In their respective appeals, they preferred an application under Section 389 of the Code of Criminal Procedure, 1973 seeking suspension of the substantive order of sentence of life imprisonment.
9. The High Court allowed the said applications.
10. In such circumstances, referred to above, it is the de-facto complainant who is here before us by way of these appeals.
11. We take notice of the fact that the State of Jharkhand although served with the notice issued by this Court yet has chosen not to remain present before this Court and make good its stance in the present appeals. This is something very disturbing and unfortunate because we are dealing with a very serious matter wherein the High Court has by a cryptic order suspended the substantive order of life imprisonment.
12. The impugned order passed in I.A. No.4953/2025 filed in Criminal Appeal No.195 of 2024, being very short the same reads thus: -

I.A. No.4953/2025

"Heard Mr. Mohit Prakash, the learned counsel for the appellant and Mr. Shailesh Kr. Sinha, the learned A.P.P. for the State.

This application has been preferred by the appellant for grant of bail during the pendency of this appeal.

The appellant has been convicted for the offences under sections 147, 148, 342/149, 325/149, 302/149 of the Indian Penal Code and has been sentenced to imprisonment for life along with a fine of Rs.10,000/- for the offence under sections 302/149 of the Indian Penal Code.

It has been alleged that while the brother of the informant was returning to his village along with one Inderlal Verma, they were accosted by several named and unnamed persons who had committed assault upon them with lathi, danda, rod and pistol, which resulted in death of the brother of the informant.

Submission has been advanced by the learned counsel for the appellant that the allegations are general and omnibus in nature.

It has further been submitted that the injured eye-witness PW-5 has taken the name of several accused persons including the present appellant apart from 20-25 unknown persons who are said to have committed assault upon the brother of the informant. The learned counsel therefore submits that the allegations being general and omnibus in nature the appellant deserves to be released on bail.

The learned A.P.P. has opposed the prayer for bail of the appellant and has submitted that the appellant has got several criminal antecedents.

However, considering the nature of allegations against the appellant which clearly transpires that the same are general and omnibus, we are inclined to admit the appellant on bail.

Accordingly, during the pendency of this appeal, the appellant is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Giridih in ST No. 104 of 2021, arising out of Bengabad PS Case No. 187 of 2020.

I.A. stands disposed of.”

12.1. The impugned order passed in I.A. No.7257 of 2025 filed in Criminal Appeal No.191 of 2024, being very short the same reads thus: -

“I.A. No. 7257 of 2025

Heard Mr. Mohit Prakash, the learned counsel for the appellant and Mr. Satish Prasad, the learned A.P.P. for the State assisted by Mr. Govind Ray Karan, the learned counsel appearing for the informant.

Prayer for bail of the appellant was earlier dismissed as withdrawn in IA No. 6155 of 2024.

It has been submitted that subsequently one of the co-convict Rajesh Rai has been granted bail by this Court in Cr. Appeal (DB) No. 195 of 2024. It has further been submitted that the allegations are general and omnibus in nature and the evidence of the injured eye-witness (PW-5) clearly reveals that several named and 20-25 unnamed persons had committed assault upon the brother of the informant.

Learned A.P.P. though has opposed the prayer for bail of the appellant but does not dispute the aforesaid fact.

Regard being had to the above, during the pendency of this appeal, the appellant is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Giridih in S.T. No. 104 of 2021.

IA. stands disposed of.”

12.2. The impugned order passed in I.A. No. 4952 of 2025 filed, in Criminal Appeal No.189 of 2024, being very short the same reads thus:-

“IA. No. 4952 of 2025

Heard Mr. A.K. Kashyap, learned senior counsel for the appellant and Mr. Saket Kumar, teamed A.P.P on behalf of the State, assisted by Mr. Ankit Apurva learned counsel appearing for the informant.

This interlocutory application has been preferred by the appellant for grant of bail to him during the pendency of this appeal.

The appellant has been convicted for the offences under Sections 147,148,342/149, 325/149 & 302/149 of the Indian Penal Code and has been sentenced, to undergo imprisonment for life alongwith a fine of Rs.10,000/- for the offence under Section 302/149 of the Indian Penal Code.

Submission has been advanced by the learned senior counsel for the appellant that the allegations against the appellant are general and omnibus in nature. It has further been submitted that in similar circumstances, one of the co-convict Rajesh Rai has been granted bail by this Court vide Criminal Appeal (D.B.) No. 195 of 2024.

Learned A.P.P. appearing on behalf of the State, assisted by learned counsel for the informant have opposed the prayer for bail of the appellant.

Learned counsel appearing for the informant has submitted that the distinguishing feature of the case of the present appellant and the co-convict Rajesh Rai is the fact that it was the appellant who was armed with a Danda and who was following the deceased.

It has been alleged that the brother of the informant was returning from his village along with one Inderlal Verma when they were accosted by several named and unnamed persons who had committed assault upon them with lathi, Danda, rod and pistol resulting in the death of the brother of the informant. The injured eye witness has been examined as P.W.5., who has taken the name of the present appellant as well as the other co-convict. The allegation appears to be general and omnibus in nature and the case of the present appellant is similar to that of the co-convict-Rajesh Rai who has already been granted bail by this Court earlier.

On consideration of the above, we are inclined to admit the appellant on bail. Accordingly, during the pendency of this appeal, the appellant is directed, to be released on bail, on furnishing bail bond of Rs. 10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of learned

Sessions Judge, Giridih, in connection with S.T. Case No.104/2021, arising out of Bengabad P.S. Case No. 187/2020.

The aforesaid i.A. stands allowed and disposed of.”

13. We heard Mr. Yashaswi SK Chocksey, the learned counsel appearing for the appellant – complainant and Mr. Subhro Sanyal, the learned counsel appearing for the accused.

14. The law as regards suspension of sentence by the appellate courts in exercise of powers under Section 389 of the Code (now Section 430 of the Bharatiya Nagrik Suraksha Sanhita, 2023) is well settled. Ordinarily, if the sentence is for a fixed term, the court may exercise its discretion leniently in suspending such sentence of fixed term, pending the final disposal of the Criminal Appeal of the convict.

15. Even in cases where the sentence is for a fixed term, there is a caveat that if there are exceptional circumstances, then the Court may decline to suspend the sentence.

16. What could be those exceptional circumstances is not something exhaustive. It is for the Court concerned to look into those exceptional circumstances as may be pointed out by the State. However, the only consideration that should weigh with the appellate court while considering the plea for suspension of sentence of life imprisonment is that the convict should be in a position to point out something very palpable or a very gross error in the judgment of the Trial Court on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed and he be acquitted.

17. Unfortunately, the High Court has not taken into consideration any of the well-settled principles of law governing suspension of the substance order of sentence of life imprisonment.

18. What has the High Court done in this case. All that the High Court has done is to record in brief the submissions canvassed on behalf of the convicts and the State respectively and has observed that the allegations are general and omnibus.

19. The first thing that the High Court was expected to do is to give a fair idea in its order what is the case of the prosecution. Thereafter, the High Court should have given a fair idea what type of evidence has been led by the prosecution. Thereafter, the High Court should have considered what is the nature of evidence against each of the accused persons – herein on the basis of which the trial court held them guilty of the offence of murder with the aid of Section 149 IPC.

20. The case in hand seems to be one of an unlawful assembly whose common object was to commit the alleged crime. Of course, this is *prima facie*.

21. When Section 149 IPC is made applicable, the Court should be mindful that all that is required to be looked into is whether the accused was one of the members of the unlawful assembly or not. Even if a particular accused has not participated in the actual assault, he could still be held guilty.

22. All the aforesaid aspects of the matter should have been threadbare considered by the High Court before exercising its discretion in favour of the convicts.

23. In such circumstances, referred to above, we are left with no other option but to set aside the orders and remit the matters to the High Court for fresh hearing of the applications on its own merits keeping in mind the settled principles of law.

24. We may refer to the two Judgments of this Court explaining the well-settled principles governing Section 389 of the Code:-

(i) Lilaben vs. State of Gujarat & Anr. (Criminal Appeal No.2101/2025 decided on 21-4-2025.

(ii) Omprakash Sahni vs. Jai Shankar Chaudhary And Anr.Etc.(Criminal Appeal Nos. 1331-1332/2023 decided on 2-5-2023.

25. We also take notice of the fact that in so far as the convict – Rajesh Rai is concerned, he is alleged to have committed this offence of murder while he was on bail in connection with one another offence of murder.

26. We fail to understand why all these aspects were not considered by the High Court. We also wonder whether all these aspects were brought by the State to the notice of the High Court. It is very surprising that the State has not even bothered to challenge the impugned orders far from appearing before us today.

27. In the result all the three appeals succeed and are allowed. The impugned orders passed by the High Court are set aside.

28. We direct all the three convicts to surrender before the concerned Jail Authority within 24 hours from now. The High Court shall hear their applications seeking suspension of sentence only after they produce the surrender certificate. If they fail to surrender within 24 hours from today, the trial court shall issue non-bailable warrant for their arrest.

29. The Registry is directed to forward one copy of this order at the earliest to Chief Justice of the Jharkhand High Court. This is a matter which the Chief Justice should look into immediately.