

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
Cr. Appeal (S.J.) No. 668 of 2018

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Lalu Prasad @ Lalu Prasad Yadav --- --- Appellant  
**Versus**  
The State of Jharkhand through CBI (AHD) --- --- Respondent  
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**Coram: Hon'ble Mr. Justice Aparesh Kumar Singh**

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For the Appellant: M/s Kapil Sibal, Debarshi Mondal, Adit S. Pujari,  
Anant Kumar Viz, Raghav Tankha,  
Shrish Mazumdar, Advocates

For the Respondent: Mr. Rajiv Sinha, A.S.G.I  
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24/ 17.04.2021 Heard learned Senior Counsel for the appellant and learned A.S.G.I representing the C.B.I on the renewed prayer for suspension of sentence made through I.A. No. 2013/2021.

2. Appellant stands convicted in connection with R.C. Case No. 38(A)/1996-Pat vide impugned judgment dated 19.03.2018 and order of sentence dated 24.03.2018 passed by learned Additional Judicial Commissioner-I-cum Special Judge-VII, CBI (AHD Scam), Ranchi whereby he has been convicted and sentenced to undergo R.I. for seven years for the offences under Sections 120B r/w sections 420, 467, 468, 471 and 477A of the Indian Penal Code and a fine of Rs. 30,00,000/- and in default in payment thereof, S.I. for one year separately. He has been further convicted and sentenced to undergo R.I. for seven years for the offences under Sections 13(2) r/w Section 13(i) (c) (d) of Prevention of Corruption Act and a fine of Rs. 30,00,000/- and in default in payment thereof, S.I. for one year separately. Both the sentences have been ordered to run consecutively and not concurrently.

3. Earlier, the prayer for suspension of sentence made by the appellant through I.A. No. 11049/2018 was rejected vide order dated 10.01.2019, both on merits and considering the fact that appellant had not undergone custody for more than half of sentence awarded by then, even if sentences are treated to concurrently and not consecutively. Challenge to the order dated 10.01.2019 in S.L.P. (Criminal) No. 2219/2019 along with two other Special Leave Petitions arising out of the orders passed on the same date in the case of the appellant in connection with his conviction in R.C. Case No. 64(A)/1996 and R.C. Case No. 68(A)/1996 were declined by the Apex Court by order dated 10.04.2019. Prayer for suspension of sentence was renewed by the

appellant through I.A. No. 9862/2019. This Court, after consideration of the plea, declined to allow the prayer vide order dated 06.12.2019 for the reason that the appellant had not completed half of the custody by then. Prayer for suspension of sentence was once again renewed through I.A. 5606/2020 taking a plea that counting the period of custody of different periods of time, as enumerated in the table furnished in the said I.A., appellant had completed half of the custody i.e. 42 months against the sentence of seven years each imposed for the offences both under the provisions of I.P.C and P.C. Act. This Court, vide a detailed order dated 19.02.2021 considering the prayer of the appellant, dealt with each of the submissions relating to different periods of custody enumerated by him and held that the appellant was still short of approximately 01 month and 17 days as on that date i.e. 19.02.2021 in completing half of the period of custody of 42 months against the sentence of seven years awarded under both the provisions of I.P.C. and P.C. Act, though ordered to run consecutively. Therefore, prayer for suspension of sentence made on behalf of the appellant was rejected at that stage.

4. Learned Senior counsel for the appellant submits that by the very computation of the total period of custody undergone by this appellant in connection with the instant R.C. Case No. 38(A)/1996-Pat, the appellant has completed the remaining period of 01 month and 17 days of custody by 6<sup>th</sup> April 2021. Therefore, appellant should be granted bail by suspending the sentence. Learned Senior counsel for the appellant has submitted that this Court has granted the privilege of suspension of sentence upon completion of half of the custody of 42 months against the sentence of seven years awarded by the learned Trial Court, even though sentences were ordered to run consecutively such as in the case of Dr. Om Prakash Diwakar (R.C. Case No. 45(A)/1996 Pat) in Cr. Appeal (SJ) No. 812/2018 vide order dated 21.06.2019. It is submitted by the learned senior counsel for the appellant that sound exercise of judicial discretion conferred upon this Court under section 389(1) of the Cr. P.C has not been faulted by the CBI in any of those cases. Therefore, on the plea of parity, appellant deserves to be granted bail by suspending his sentence having served more than 42 months i.e. half of the custody against the sentence of seven years awarded under the provisions of I.P.C and P.C. Act, though ordered to run consecutively. It is submitted that this Court for the purposes of suspension of sentence in cases of other such

convicts / appellants, treated half of the custody of seven years for granting bail. Learned senior counsel has also submitted that the appellant is 73 years old and is suffering from several ailments.

5. Learned ASGI has strongly opposed the prayer. A reply to the instant I.A. has also been filed by them on 13.04.2021. Learned ASGI has submitted that order dated 19.02.2021 has not been challenged by the CBI. Learned ASGI has however relied upon the provisions of section 30(1) and section 427 of the Cr. P.C. Further, in order to buttress his submission based upon the provisions of section 427 of the Cr. P.C, he has relied upon the cases of **Sharad Hiru Kolambe versus State of Maharashtra and others** reported in [(2018) 18 SCC 718, para-11] and **Vicky Alias Vikas versus State (NCT of Delhi)** reported in [(2020) 11 SCC 540, para-4, 9, 11, 12 and 16]. Learned counsel for the CBI submits that prayer for suspension of sentence of this appellant has been rejected earlier, both on merits and on the ground that the appellant had not undergone custody for more than half of the sentence awarded to him, vide order dated 10.01.2019 which has been upheld by the Apex Court. The Apex Court refused to interfere in the order vide order dated 10.04.2019 passed in S.L.P. (Criminal) No. 2219/2019. However, on the plea of completion of half of the custody claimed by the appellant, it is submitted that since sentences have been ordered to run consecutively, appellant has not completed half of the custody i.e. seven years by now. On being specifically asked, learned counsel for the CBI has fairly stated that both decisions rendered in the case of **Sharad Hiru Kolambe (Supra)** and **Vicky Alias Vikas (Supra)** arise from the judgments passed by the High Court affirming conviction of the concerned appellant. Those decisions have not been rendered in the context of exercise of power under section 389(1) of the Cr. P.C which is the power of the Court to suspend the sentence during pendency of the appeal. However, he reiterates that the principles laid down under section 30(1) Clause (3) to the proviso and section 427 of the Cr. P.C do mandate that sentences imposed upon the appellant are to run consecutively and not concurrently. Therefore, appellant should not be treated to have completed half of the custody on completion of 42 months only. Therefore, his prayer for bail may be rejected.

6. Learned Senior counsel for the appellant has submitted in reply that none of the judgments relied upon by the learned ASGI relate to the

exercise of the power conferred to the Appellate Court under section 389(1) of the Cr. P.C. It is submitted that this Court has wisely exercised its judicial discretion on principles of parity uniformly to all such convicts / appellants not only in R.C. Case No. 38(A)/1996-Pat, but also other convicts in R.C. Case Nos. 68(A)/1996, 64(A)/1996 and 45(A)/1996 Pat. Moreover, the instant conviction arise out of the case of single transaction and imposition of consecutive sentence by the learned CBI Court has no basis. He submits that in any case whether sentences are to run consecutively or not, depends upon the final outcome of the appeal. Therefore, the objection taken by the CBI has no legs to stand. Therefore, prayer for suspension of sentence may be allowed.

7. I have considered the submissions of learned senior counsel for the appellant and learned ASGI representing the CBI. Chronology of events taken note of in the foregoing paragraphs of the order indicate that the prayer for suspension of sentence of this appellant was rejected first on 10.01.2019, both on merits and on the period of custody undergone and then again on 06.12.2019 since the appellant had not completed half of the custody by then in the instant R.C. Case No. 38(A)/1996 Pat. Prayer for suspension of sentence made through I.A. No. 5606/2020 was once again rejected vide order dated 19.02.2021 for the reason that the appellant was still short of approximately 01 month and 17 days, as on that date, in completing half of the period of custody of 42 months against the sentence of seven years awarded both under the provisions of I.P.C and P.C. Act, though ordered to run consecutively. By that computation, appellant has completed half of the custody i.e. 42 months under the impugned conviction treating the sentences to run concurrently by 6<sup>th</sup> April 2021. This Court has followed a uniform principle while granting suspension of sentence to other convicts / appellants in different R.C. cases including the instant R.C. case on completion of half of the custody.

8. The order dated 19.02.2021 wherein this Court has held that appellant is still short of approximately 01 month and 17 days in completing half of the custody of 42 months is not under challenge by the CBI. However, learned counsel for the CBI has relied upon the provisions of sections 30(1) and 427 of the Cr. P.C in order to submit that the sentence of seven years imposed upon the appellant under different provisions of I.P.C and P.C Act have been ordered to run

consecutively. Therefore, appellant should not be treated as having completed half of the custody i.e. 42 months. Learned counsel has also placed reliance upon the decision of the Apex Court in the case of **Sharad Hiru Kolambe (Supra)** and **Vicky Alias Vikas (Supra)**. It however appears from perusal of both the decisions that they arose from the judgments of the High Court affirming the conviction of the concerned appellant, wherein a plea was raised that sentences should not run consecutively. In the case of **Sharad Hiru Kolambe (Supra)**, the plea that default sentence should not be treated to run consecutively, was rejected by the Apex Court. However, none of these decisions relate to the exercise of the power under section 389(1) of the Cr. P.C by the Appellate Court to suspend sentence. Power of suspension of sentence conferred upon the Court under section 389(1) of the Cr. P.C is to be exercised on sound judicial discretion. It is not hedged with any such conditions upon which learned counsel for the CBI has sought to place reliance. This Court, on the other hand, has been following a uniform principle in matters of suspension of sentence of such convicts under the Fodder Scam cases such as, in R.C. Case Nos. 64(A)/1996, 45(A)/1996 and 68(A)/1996 including instant R.C. Case No. 38(A)/1996 Pat. This Court has granted suspension of sentence on completion of half of the custody by other convicts including those upon whom sentences of seven years each under the provisions of I.P.C and P.C. Act have been imposed and were ordered to run consecutively, such as in the case of Dr. Om Prakash Diwakar (convict in R.C. Case No. 45A/1996 Pat) in Criminal Appeal (SJ) No. 812 of 2018 order dated 21.06.2019 reckoning the period of 42 months as half of the custody. Therefore, there is no reason to depart from the principles of parity in the case of the present appellant when he has completed more than half of the custody of 42 months against the sentence of 07 years awarded both under the provisions of I.P.C and P.C. Act, though ordered to run consecutively. As such, I am inclined to enlarge the appellant on bail by granting him the privilege of suspension of sentence. Accordingly, let the appellant **Lalu Prasad @ Lulu Prasad Yadav** be released on bail, during the pendency of this appeal, on furnishing bail bonds of Rs. 1,00,000/- (Rupees One Lakh) with two sureties of the like amount each, to the satisfaction of learned Additional Judicial Commissioner-I-cum Special Judge-VII, CBI (AHD Scam), Ranchi in connection with R.C. Case No. 38(A)/1996-Pat,

subject to deposit of fine amount of Rs. 5,00,000/- (Rupees five lakh) + Rs. 5,00,000/- (Rupees five lakh) in the Court below and if not wanted in connection with any other case. The appellant would not leave the country without permission of the Learned Trial Court. He would also submit his passport, if any, before the Learned Trial court. Appellant or his bailors shall not change their address or mobile number without prior permission of the learned Trial Court. I.A. No. 2013/2021 stands disposed of accordingly.

**(Aparesh Kumar Singh, J)**

Ranjeet/