

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1607 of 2015**

1. Bhawan Singh, S/o Gohadu Singh Gond, aged about 42 years,
2. Jai Singh, S/o Samaru Gond, aged about 52 years,
3. Sukhsen Gond, S/o Gayadin Gond, aged about 40 years,

[All resident of Village Dhhummatola, Police Station Marwahi, District Bilaspur (M.P.)]

---- **Appellants**
(In Jail)

Versus

State of Chhattisgarh, through Station House Officer Marwahi, Tehsil Pendra Road, District Bilaspur (Chhattisgarh)

---- **Respondent**

For Appellants	: Mr. Ravindra Sharma, Advocate
For Respondent-State	: Mr. Anmol Sharma, Panel Lawyer

DB: Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Smt. Justice Rajani Dubey

Order on Board

(11.05.2022)

Sanjay K. Agrawal, J

1. This is extremely unfortunate case where though the appellants herein had been admitted to privilege of bail by order of this Court dated 29.04.2016 and were directed to furnish bail bonds with one solvent surety each for their release, but they could not furnish bail bonds on the ground of their poverty and being member of Scheduled Tribe community and are still in jail for more than six years despite bail have been granted by suspending their jail sentence and now in shape of **IA No.03** an application has been filed seeking modification of the aforesaid order dated 29.04.2016, permitting them to be released on personal bond(s).



2. Mr. Ravindra Sharma, learned counsel for the appellants submits that the family members of the appellants are not in contact with the appellants and, therefore, they have preferred the instant appeal through legal aid. They are poor villagers and belong to Scheduled Tribe community and are continuously incarcerated in jail since 11.08.2013, thus, they are unable to comply with the conditions stipulated by this Court in the order dated 29.04.2016 while granting bail to them and, because of which, they could not be released on bail. This fact has also been brought to the notice of the Secretary, High Court Legal Aid Services Committee by the jail authorities vide its letter dated 13.04.2022. He relied on an order passed by this Court in the case of **Pardeshi @ Ratiram @ Raturam and others vs. State of Chhattisgarh**¹ wherein this Court relying on the judgments of Supreme Court in the cases of **Moti Ram and others vs. State of M.P.**² and **Hussainara Khatoon and others (I) vs. Home Secretary, State of Bihar**³ directed the appellants therein to be released on bail on their executing only personal bond and exempted other conditions stipulated earlier while granting bail to the appellants therein. Hence, praying similar direction modification in the order dated 29.04.2016 is prayed for.

3. Learned State counsel submits that appropriate order in this regard be passed.

4. We have heard learned counsels for the parties, considered their rival submissions made hereinabove and also went through the record with utmost circumspection.

5. The question which arose for consideration before us is whether the appellants can be released on bail on their executing only personal bond

¹ CRA No.1239 of 2019, dated 29.03.2022

² (1978) 4 SCC 47

³ (1980) 1 SCC 81



without insisting them to furnish bail bonds alongwith sureties.

6. In order to decide the plea, it would be appropriate to notice Section 389(1) of CrPC by which sentence awarded to an accused person convicted for an offence can be suspended in pending appeal and he can be released on bail, which states 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.”

7. A careful perusal of the provisions contained in Section 389(1) of CrPC would show that the Legislature has consciously empowered the Appellate Court to suspend the substantive jail sentence of a convicted person, for the reasons to be recorded in the order, pending final disposal of the criminal appeal filed by him, and if he is in confinement, he be released on bail or on his own bond as, such, it is absolutely discretionary in nature and it is for the Appellate Court to decide as to whether an accused can be released on bail or on his own bond by suspending his substantive jail sentence.

8. The Supreme Court in the case of **Moti Ram (supra)** considered the issue whether the Appellate Court is empowered to enlarge convicted accused on his own bond without sureties and in Para-3 of the judgment their Lordships framed three questions, out of which we are concerned here only with Questions No.(1), which states as under:

“3.(1) Can the Court, under the Code of Criminal Procedure, enlarge, on his own bond without sureties, a person undergoing incarceration for a non-bailable offence either as undertrial or as convict who has appealed or sought special leave?....”



Thereafter, their Lordships relying upon Gujarat Committee Report proceeded to answer the aforesaid question in Para-14, 18, 18A, 20, 27, 30 & 31 which reads thus:

“14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

18. The Encyclopaedia Britannica brings out the same point even in more affluent societies:

"Bail, procedure by which a judge or magistrate sets at liberty one who has been arrested or imprisoned, upon receipt of security to ensure the released prisoner's later appearance in court for further proceedings .. Failure to consider financial ability has generated much controversy in recent years, for bail requirements may discriminate against poor people and certain minority groups who are thus deprived of an equal opportunity to secure their freedom pending trial. Some courts now give special consideration to indigent accused persons who, because of their community standing and past history, are considered likely to appear in court. [Encyclopaedia Britannica, Vol. I, p.736 (15th Edn) Micro Edn.]"

18A. Again:

"We should suggest that the Magistrate must always bear in mind that *monetary bail is not a necessary element of the Criminal process* and even if risk of monetary loss is a deterrent against fleeing from justice, it is not the only deterrent and there are other factors which are sufficient deterrents against flight. *The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail.* That concept is out-dated and *experience has shown that it has done more harm than good.* The new insight into the subject of pre-trial release which has now been developed in socially advanced countries and particularly the United States should now inform the decisions of the Magistrates in regard to pre-trial release. Every other feasible method of pre-trial release should be exhausted before resorting to monetary bail. The practice which is now being followed in the United States is that the accused should ordinarily be released on order to appear or on his own recognizance unless it is shown that there is substantial risk of non-appearance or there are circumstances justifying imposition of conditions on release .. *If a Magistrate is Satisfied*



after making an enquiry into the condition and background of the accused *that the accused has his roots in the community and is not likely to abscond, he can safely release the accused on order to appear or on his own recognizance*"

(emphasis added)

20. Thus, the legal literature, Indian and Anglo-American, on bail jurisprudence lends countenance to the contention that bail, loosely used, is comprehensive enough to cover release on ones own bond with or without sureties.

27. The slippery aspect is dispelled when we understand the import of Sec. 389(1) which reads:

389 (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.

The court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse off than a convict or that the power of the court to release increases when the guilt is established. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation *pro tempore* without sureties while an undertrial cannot is a *reductio ad absurdum*.

30. If sureties are obligatory even for juveniles, females and sickly accused while they can be dispensed with, after being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release only with sureties while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to Mean, viz., a generic expression used to describe judicial release from *custodia juris*. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both-release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

31. Even so, poor men- Indians are, in monetary terms, indigents- young persons infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances- put whatever reasonable conditions you may."



9. Similarly, the Supreme Court in the case of **Hussainara Khatoon (supra)** held that an accused can be released on bail on his executing personal bond also. Relying upon the decision of **Moti Ram (supra)**, Justice R.S. Pathak, though in his separate, but in a concurring opinion held in Para-8 as under:

“8. In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, I have to say this briefly. There is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure, and it is for the courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee and hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account (Section 440, CrPC). A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966:

In determining which conditions of releases will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings (18 US S. 3146(b)).

These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre-trial release in India could be avoided or, in any event, greatly reduced. See: *Moti Ram vs. State of M.P.*, (1978) 4 SCC 47.”

10. Thus, in view of the provision contained in Section 389(1) of CrPC and in view of principles of law laid down by their Lordships of the Supreme Court in **Moti Ram (supra)** and **Hussainara Khatoon (supra)**, the Appellate Court in appropriate case is fully empowered to release the convict on personal



bond taking into account the nature and circumstance of offence charged, evidence available against the convict, his family background and financial condition etc, to ensure his appearance in Court as and when required.

11. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the matters of **Moti Ram (supra)** and **Hussainara Khatoon (supra)**, it is quite vivid that the appellants being poor persons belonging to Scheduled Tribe community are in jail since 11.08.2013 and are not in contact with their family members and, therefore, they are unable to furnish bail bonds as directed by this Court vide order dated 29.04.2016 while granting bail to them. Accordingly, we deem it appropriate to direct that the appellants, namely, **Bhawan Singh, Jai Singh and Sukhsen Gond** be released on bail forthwith on their executing only personal bond of Rs.5,000/- (Rupees Five Thousand Only) and shall appear before the Registry of this Court on 16th August, 2022. They shall thereafter appear before the concerned trial Court on a date to be given by the Registry of this Court and shall continue to appear there on all such subsequent dates as are given to them by the said Court, interval being not less than 6 months, till the disposal of this appeal. It is ordered accordingly.

12. Accordingly, IA No.03 is **allowed**. Order dated 29.04.2016 stands modified to the extent indicated above.

13. A copy of this order be communicated to the concerned jail authorities by fax/e-mail.

14. While parting with the matter in this regard, the Member Secretary, Chhattisgarh State Legal Services Authority and the Secretary, High Court Legal Services Committee are directed to collect information from all the District Legal Services Authorities about the cases in which accused persons

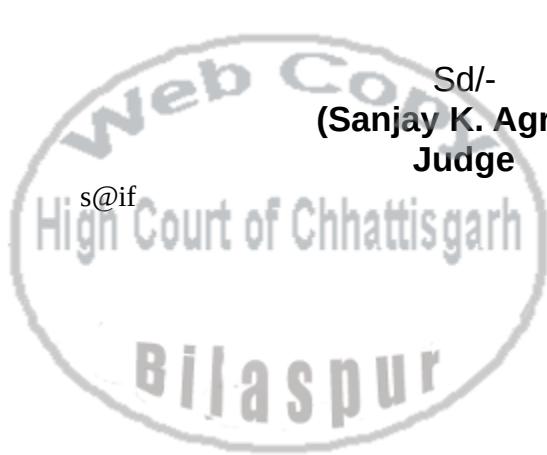


have been enlarged on bail by this Court but are still in jail due to their inability to furnish bail bonds, as everyday we are coming across the cases in which despite order of this Court granting bail to the accused persons, they have not been released from jail and report be submitted on or before 13.06.2022. This exercise be done within a period of four weeks and matter be listed for consideration on 15.06.2022.

15. A copy of this order be also sent to the Member Secretary, Chhattisgarh State Legal Services Authority; Secretary, High Court Legal Services Committee and to all the District Legal Services Committees in the State for information and needful.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rajani Dubey)
Judge



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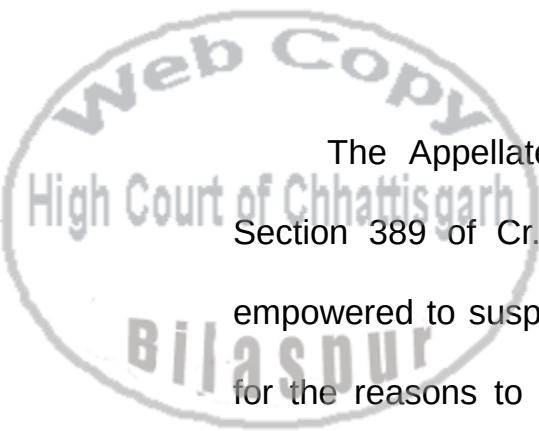
---- **Appellants**
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---- **Respondent**

HEAD NOTE

The Appellate Court while considering an application filed under Section 389 of Cr.P.C. for suspension of sentence and grant of bail is empowered to suspend the substantive jail sentence of a convicted person, for the reasons to be recorded in the order, pending final disposal of the criminal appeal filed by him, and if he is in confinement, he be released on bail or on his own bond (personal bond).

दण्ड प्रक्रिया संहिता की धारा 389 के अंतर्गत दण्डादेश के निलंबन एवं जमानत मंजूर किये जाने हेतु प्रस्तुत आवेदन पत्र पर विचार करते समय अपीलीय न्यायालय ऐसे कारणों को जो उसके द्वारा अभिलिखित किये जायेंगे, दोषसिद्ध व्यक्ति द्वारा की गई अपील के लंबित रहने तक, दोषसिद्ध व्यक्ति के मुख्य दण्डादेश के निलंबन का आदेश देने हेतु सशक्त है, और यदि वह व्यक्ति परिरोध में है तो अपीलीय न्यायालय आदेश दे सकता है कि वह जमानत पर या उसके अपने बंध पत्र पर छोड़ दिया जाए ।