

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Criminal Appeal (D.B.) No.703 of 2024**

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1. Basmati Devi, aged about 65 years, wife of Ramchandra Yadav, resident of Village Semari, P.O & P.S-Bardiha, District-Garhwa.
2. Durgesh Yadav @ Satyendra Yadav, aged about 34 years, son of Ramchandra Yadav, resident of Village-Semari, P.O & P.S-Bardiha, District-Garhwa ... .. Appellants

**Versus**

The State of Jharkhand ... .. Respondent

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

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For the Appellants : Mr. R.S. Mazumdar, Sr. Advocate  
Mr. Nishant Kr. Roy, Advocate  
For the State : Mr. Bhola Nath Ojha, Spl.PP  
For the Informant : Mr. Ashok Kumar, Advocate

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**C.A.V. on 16.12.2025**

**Pronounced on 07/01/2026**

**Per Sujit Narayan Prasad, J.**

**I.A. (Cr.) No. 15053 of 2025**

1. The instant interlocutory application has been preferred by appellant No.2, namely, Durgesh Yadav @ Satyendra Yadav filed under Section 430(1) of BNSS, 2023 for keeping the sentence in abeyance in connection with the judgment of conviction dated 02.05.2024 and order of sentence dated 06.05.2024 passed by the learned Sessions Judge, Garhwa; in Sessions Trial No. 32 of 2017, arising out of Bardiha P.S. Case No. 60 of 2015, whereby and where under the accused persons including the present appellant/applicant have been convicted under Sections 302/34, 307/34, 504/34 and 341/34 of the IPC and sentenced to undergo R.I for life along with a fine of Rs.20,000/- each under section 302/34 of the IPC and in default of payment of fine, they have been ordered to undergo R.I of six months, R.I. for ten years with a fine of Rs.20,000/- each under section 307/34 of the IPC and in default of payment of fine, they have been ordered to undergo R.I of six months, R.I. for one year under section

341/34 of the IPC and R.I for two years under section 504/34 of the IPC, and it has also been ordered that all the sentences run concurrently and period of detention already undergone by the appellants as under trial prisoner be set off from above period of sentence.

2. This Court has heard the learned senior counsel appearing for the present applicant and the learned counsel appearing for the State as well as the learned counsel appearing for the informant at length on the application for suspension of sentence of the present applicant on 16.12.2025 and after concluding the argument, the order was reserved on the same day.

### **Factual Matrix**

3. Prosecution case in brief as per *fardbayan* of informant namely Saroja Devi recorded on 21.12.2015 wherein it has been stated by the informant that on the same day at about 7:00 P.M. she along with her father Ram Prasad Yadav (now deceased) were taking the buffaloes towards a well for drinking water, in the meantime, Ramchandra Yadav came and told that your cow grazed my *rahar* crops and started abusing her father. Her father resisted and said not to abuse, meanwhile, Durgesh Yadav with lathi, Awadhesh Yadav with sabal, Gudan Yadav with tangi, Basmati Devi and Sunita Devi came near her bhandar, started abusing and assaulting her and her father with lathi, tangi and sabal. Her father in order to save his life running away but all of them chased him and attacked with lathi, tangi, sabal and assaulted him on whole body, due to which he fell down after becoming unconscious and he was taken to Garhwa hospital for treatment but on the way he died. The accused persons have also injured her by beating. Hence the present case.

4. On the basis of the aforesaid *fardbayan*, a formal FIR was instituted against the accused persons as Bardiha PS Case No.60 of 2015 dated 21.12.2015 under sections 147, 148, 149, 341, 323, 324, 307, 504 and 302 of the IPC against the six named accused persons. On completion of investigation, the police have submitted charge sheet No.21/2016 dated 15.03.2016 under sections 341, 323, 324, 307, 302 and 504/34 of the IPC against the accused Ramchandra Yadav, Awadhesh Yadav and Sunita Devi after keeping the supplementary investigation to be continued against the accused, namely, Durgesh Yadav (the appellant no.2 herein), Guda Yadav @ Sant Yadav and Basmati Devi (the appellant no.1 herein). Thereafter, the learned trial Court has taken cognizance against the accused Ramchandra Yadav, Awadhesh Yadav and Sunita Devi.
5. After completing supplementary investigation against the accused Durgesh Yadav @ Satyendra Yadav and Basmati Devi, the police has submitted supplementary charge sheet under sections 341, 323, 324, 307, 302 and 504/34 of the IPC, keeping the supplementary investigation to be continued against accused Gudan Yadav.
6. Thereafter, the learned trial Court had also taken cognizance against the appellants herein, namely, Durgesh Yadav @ Satyendra Yadav and Basmati Devi under the said offence, i.e., under sections 341, 323, 324, 307, 302 and 504/34 of the IPC.
7. After that, the police had again submitted supplementary charge sheet against the accused Gudan Yadav @ Sant Yadav under sections 341, 323, 324, 307, 302 and 504/34 of the IPC and the case was committed to the Court of sessions on 02.02.2017 and charge was framed under sections 341/34, 323/34, 324/34/307/34 and 504/34 of the IPC against these

accused persons and contents of the allegations were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

8. During Sessions trial, in order to substantiate the prosecution case, prosecution has examined altogether 18 witnesses and the learned trial Court after appreciation of evidence has found the charges levelled against the present applicant along with other accused proved beyond reasonable doubt and accordingly the present applicant/appellant no.2 and co-accused have been convicted and sentenced as aforesaid.
9. The instant interlocutory application has been preferred by the applicant/appellant no.2, namely, Durgesh Yadav @ Satyendra Yadav with the prayer for the suspension of sentence during pendency of the instant appeal.
10. It needs to mention herein that earlier this applicant was moved before this Court for suspension of sentence by filing I.A (Cr.) No.11398 of 2024, but the same was dismissed as not pressed vide order dated 11.11.2024.

**Submission of the learned senior counsel for the applicant/appellant no.2.**

11. It has been contended on behalf of the appellant no.2 that the applicant/appellant no.2 has been falsely implicated in the present case merely on the basis of suspicion.
12. It has been contended that the impugned judgment and sentence have been passed on conjecture and surmises.
13. It has been contended that the co-accused, namely, Sunita Devi has already been granted the privilege of bail by a co-ordinate Division Bench

of this Court vide order dated 06.08.2024 passed in I.A No.6031 of 2024 in Criminal Appeal (DB) No.808 of 2024; another co-accused, namely, Basmati Devi and Ramchandra Yadav have already been granted the privilege of bail by a co-ordinate Division Bench of this Court vide a common order dated 02.09.2024 passed in I.A No.8337 of 2024 in Criminal Appeal (DB) No.703 of 2024 and I.A No.8633 of 2024 in Criminal Appeal (DB) No.698 of 2024, respectively.

14. It has further been contended that another co-convict, namely, Gudan Yadav @ Sant Yadav has already been granted the privilege of bail by a co-ordinate Bench of this Court vide order dated 09.07.2025 passed in I.A No.5877 of 2025 in Criminal Appeal (DB) No.704 of 2024.
15. It has been contended that both the sides are agnates and there were inimical terms as there was a dispute relating to grazing of buffalo and, as such, there is a probability of false implication of the present appellant as on account of sudden provocation, that too, on the part of the informant side, the alleged incident was occurred.
16. It has been contended that all the witnesses are hearsay witness save and except the informant-Saroja Devi.
17. It has been contended that the seized articles were not sent for forensic examination and the post mortem report does not corroborate the ocular evidence.
18. It has been contended that the investigation has been conducted in the most perfunctory manner.
19. It has been contended that P.W.-15, claimed to be sole eye witness, who is the informant and daughter of the deceased, has stated in paragraph-8

of the testimony that Durgesh Yadav had assaulted her father with lathi along with other co-accused persons. But, it reveals from the post mortem report that the death was caused due to shock and hemorrhage, caused by hard blunt substance and lacerated wound was found 2” x 2” bone deep on middle of skull which shows that the role of this appellant is not vital in the alleged assault.

20. It is submitted that as per the prosecution story, the present applicant was holding the lathi in his hand and assaulted the deceased with it and it was the co-accused-Awadhesh Yadav who assaulted the deceased with *sabal* and co-accused-Gudan Yadav with an axe. Hence, the main assault was made by the co-accused, Awadhesh Yadav and Gudan Yadav and, as such, the present applicant/appellant no.2 has no vital role in the said occurrence.

21. Learned senior counsel, based upon the aforesaid grounds, has submitted that it is a fit case for suspension of sentence during pendency of the instant appeal.

**Submission of the learned Spl.PP for the State and the learned counsel for the informant:**

22. While, on the other hand, Mr. Bhola Nath Ojha, learned Spl. PP appearing for the respondent-State of Jharkhand as well as the learned counsel appearing for the informant have vehemently opposed the prayer for suspension of sentence.

23. It has been contended by the learned Spl.PP by referring to the impugned order of learned trial Court that the learned trial Court after scrutinizing the evidence, oral as well documentary, has rightly held guilty the

appellant and after taking into consideration the facts and the evidence, particularly, the evidence of the informant, who is the eye witness has passed the judgment of conviction and order of sentence against the present applicant/appellant No.2.

24. It has been submitted that it has come on evidence of the informant that when the deceased was trying to flee away from the place of occurrence, the applicant/appellant No.2 herein had caught hold him whereafter all the accused person came there and they had assaulted the deceased due to which he died. As such, the role of the applicant/appellant No.2 herein is vital in the alleged crime.

25. It has been contended that the informant, who is the eye witness, has categorically stated that the present applicant/appellant No.2 had also assaulted the deceased with *lathi*, and as such it is evident that he had involved in the alleged crime.

26. Learned Spl.PP has further submitted that so far allegation against other co convicts who are enlarged on bail after suspension of sentence is concerned, there is difference in allegation and role played by them in the alleged offence, therefore, the principle of parity will not apply upon present applicant.

27. It has been contended that since the prosecution witnesses have fully supported the case and the materials exhibits are corroborated the same, as such, it is not a fit case where the applicant is to be released on bail by suspending his sentence.

### **Analysis**

28. We have heard the learned counsel for the parties and gone across the findings recorded by the learned trial Court in the impugned judgment as well as the testimony available in the trial Court records, as also the materials exhibit as available therein.

29. Before advertng to the facts of instant case, this Court would like to referred the ratio as laid down by the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123*** wherein it has been held that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted, for ready reference the relevant paragraph of the aforesaid Judgment is being quoted as under:

*31. In Vijay Kumar v. Narendra [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Ramji Prasad v. Rattan Kumar Jaiswal [Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366 : 2003 SCC (Cri) 1197] , it was held by this Court that in cases involving conviction under Section 302IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar [Vijay Kumar v. Narendra, (2002) 9 SCC 364 : 2003 SCC (Cri) 1195] , it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.*

***33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept***

*behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappraise the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.*

30. Thus, it is evident from the perusal of the relevant paragraphs of the aforesaid judgment that it is apparent that while considering the prayer for bail, in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.
31. Further, it needs to refer herein that the appreciation of the evidence in entirety is not required at this stage, reason being that while exercising power of suspension of sentence during pendency of appeal the Court has to see only the prima-facie case.
32. The Hon'ble Apex Court in the case of ***Preet Pal Singh vs. State of U.P., (2020) 8 SCC 645*** has observed that there is difference between grant of bail in case of pre-trial arrest and suspension of sentence, post- conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the Courts may be liberal, depending on the facts and circumstances of the case, however, in case of post-conviction bail, by suspension of operation of the sentence,

there is a finding of guilt and the question of presumption of innocence does not arise. For ready reference, the relevant paragraph of the aforesaid judgment is being quoted as under:

*"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC."*

33. Thus, it is evident from the aforesaid judgment, that during considering suspension of sentence which is the postconviction stage, the presumption of innocence in favour the accused cannot be available and at this stage, the Court's only duty is to see that whether the prima-facie case is made out or not.

34. Further, the learned senior counsel for the applicant has emphasized his argument on the issue of parity and contended that the co-accused, namely, Sunita Devi, Basmati Devi, Ramchandra Yadav and Gudan Yadav @ Sant Yadav, upon whom there are similar allegation have already been enlarged on bail by the Co-ordinate Bench of this Court as

referred hereinabove, therefore on the ground of parity also, the present applicant/appellant No.2 deserves to be enlarged on bail.

35. In the aforesaid context, this Court is conscious of the principle of parity, which is to be made applicable while granting bail/ suspending sentence.

36. It needs to refer herein that the issue of parity has been dealt by the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486*** wherein it has held as under:

*18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co-accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.*"

37. It is further settled connotation of law that Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230*** wherein it has been held as under:

*"25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], **this Court has held that while applying the principle of parity, the High Court***

*cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)*

*“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”*

*26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [Pravinbhai Hirabhai Koli v. State of Gujarat, 2020 SCC OnLine Guj 2986] , [Khetabhai Parbatbhai Makwana v. State of Gujarat, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhraisinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [Siddhraisinh Bhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. **The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused.** Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. **In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance.** The High Court has proceeded on the basis of parity on a simplistic*

*assessment as noted above, which again cannot pass muster under the law.”*

38. It is evident from the proposition laid down in the said cases that the factual aspect governing the case of the culpability said to be committed by one or the other, if found to be exactly the same and having taken into consideration by the concerned Court, then only the principle of parity will be applicable.

39. In the backdrop of the aforesaid settled proposition of law, this Court is now adverting to the fact of the instant case in order to ascertain that whether *prima facie* case for suspension of sentence is made out or not.

40. This Court is now adverting to the fact and testimonies of the witnesses, particularly, P.W.15 who is the sole eyewitness, informant and daughter of deceased. P.W.15 had stated that the incident took place three years ago from today. The time was 7:00 A.M. At the same time, she was at the *bhandar* along with her father late Ramprasad Yadav(deceased). They were proceeded at 4:00 A.M. for *bhandar* and at about 4:30 A.M. they reached there, then saw that her cow was not at *khunta*, so her father told there is no cow, let's milk the cow and after that they will search the cow. Thereafter they started milking the remaining cows and buffaloes. When they milked all the cows and buffaloes, her father said that the cow was tied to the *bhandar* of the grandfather Ramchandra, so her father told to bring the cow from there, then she went to bring the cow where she did not see the grandfather there. After that she also asked the elder mother to untie the cow, then she said that its owner is the grandfather. Thereafter when she asked her grandfather about opening the cow, he said to go and send your father. After that when she said all story to her father, then her father went there and said to untie the cow, on this he said that your cow

had eaten farming every day, then her father said that you may take the compensation for that. After that they said that you have got heat of money and blood has increased in your body and abused him with bad words. Thereafter her father after taking buffaloes went on a well to drink water and she also went there with a bucket from behind. She had further stated that after that Awadhesh Yadav, Basmati Devi, Sunita Devi came and Awadhesh had assault on her thumb due to which her thumb was fractured. Basmati Devi and Sunita Devi started assaulting her with stones. Awadhesh had also gave 3-4 lathi blow to her, due to which she fell down, then leaving her they started chasing her father, in the meantime, Durgesh Yadav @ Satendra Yadav (the applicant/appellant No.2 herein) came and caught her father, then Awadhesh Yadav had assaulted her father with lathi and asked Sunita to go and bring sabal, he will kill him by soaking sabal. After that Sunita brought sabal, tangi and lathi and assaulted her father half dead with sabal, tangi, lathi and stones. Her father was breathing slowly. Awadhesh Yadav hit on the head of her father with sabal, Gudan Yadav hit on his head and leg with tangi, due to which both legs were fractured and bruised at various places. Thereafter her mother came and started weeping. The police inspected interrogated me about the incident and wrote it down and she put her signature on it, which has been marked as Ext.-2/1. The blood stained soil and sabal were recovered by the police from the place of incident, whose seizure list was prepared.

41. Thus, from the aforesaid, it is evident that this witness (P.W.15) is injured eye-witness, therefore, her evidence has high probative value. She had specifically stated that when her father tried to flee away then, the present

applicant/appellant No.2 had caught her father and thereafter assault was made upon him.

42. P.W. 16-Dr. Kaushal Sahgal who had conducted post-mortem on deceased body had stated that death was caused due to shock and hemorrhage, caused by hard blunt substance and further he had found the following antemortem injuries on the body of deceased:

- (i) Lacerated wound 2" x 2" bone deep o middle of skull. Section of skull blood clot in meninges with laceration in brain matter.
- (ii) Lacerated wound 2" x 2" on the right elbow joint with fracture of the bone.
- (iii) Fracture and swelling of the right leg (in middle region).
- (iv) Fracture and swelling of left wrist joint

43. Thus, it is evident from the aforesaid testimony of the doctor that death was caused by hard and blunt substance and most of the injuries were lacerated wound and further from the post-mortem report it is evident that there was no injury of incised wound.

44. At this juncture it needs to refer herein that as per the Modi's "Medical Jurisprudence" a laceration is a torn, jagged break in skin/tissue from blunt force, crucial in legal cases if injury was accidental, homicidal. Further laceration is a tear in tissue caused by a shearing or crushing force and, therefore, a laceration is the result of a blunt-trauma mechanism. A laceration is further characterized by incomplete separation of stronger tissue elements, such as blood vessels and nerves. These stronger tissue elements account for "tissue bridging" which is seen in lacerations.

Lacerations are typically caused by hard objects like a pipe, rock, or the ground.

45. But a cut or incised wound is produced by a sharp edge and is usually longer than it is deep due to the sharp-force mechanism of injury, incised wounds lack tissue bridging and often display very clean, sharp wound edges. Knives, box cutters, glass, and metal typically cause incised wounds.
46. From the aforesaid it is evident that the testimony of informant P.W.15 has fully been substantiated by the testimony of the Doctor because informant in her testimony had specifically stated that lathi was also used by the accused persons. Further she had stated in the Fardbeyan that she along with her father Ram Prasad Yadav (now deceased) were taking the buffaloes towards a well for drinking water, in the meantime Ramchandra Yadav came and told that your cow grazed my *rahar* crops and started abusing her father. Her father resisted and said not to abuse, meanwhile Durgesh Yadav (present applicant) with lathi, Awadhesh Yadav with sabal, Gudan Yadav with tangi, Basmati Devi and Sunita Devi came near her bhandar, started abusing and assaulting her and her father with lathi, tangi and sabal. Further she had also stated in the examination-in-chief that when her father tried to fled away then the present accused/applicant had caught hold of her father and thereafter assault was made by the all the accused persons.
47. Since as per the settled position, at this juncture, the Court has to see only the *prima facie* case and further as per the ratio of the judgment rendered by the Hon'ble Apex Court in the case of **Om Prakash Sahni (supra)** and **Preet pal Singh (supra)** the deep appreciation of the evidence is not

allowed herein, therefore based upon the testimony of the P.W.15 and P.W.16 this Court is of the considered view that the role of the present applicant/appellant in the alleged commission of crime has fully been established.

48. So far as the question of parity is concerned it is settled position of law as discussed and referred hereinabove in the preceding paragraphs that the Court cannot exercise its power in a capricious manner and has to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established.

49. This Court is conscious of the fact that while dealing with the prayer for suspension of sentence one or the other accused person, the culpability alleged against one or the other accused person is to be taken into consideration.

50. Further, parity cannot be the sole ground for allowing prayer for suspension of sentence and the court has to satisfy itself that there are sufficient grounds for releasing the applicant on bail.

51. Further Law of Parity is a desirable rule where the case of accused/petitioner is identical with the co-accused, who is already enlarged on bail and simply because the co-accused has been granted bail also cannot be the sole criteria for granting bail to another accused if they are standing on different footings.

52. In the backdrop of the aforesaid settled position of law and factual aspects, this Court is now adverting to the orders passed by the Co-ordinate Bench by which other accused persons have been granted bail. For ready

reference, the relevant paragraphs of the orders passed by the Co-ordinate Bench is being quoted as under:

**Order dated 06.08.2024 passed in I.A. No. 6031 of 2024**

**(Cr. Appeal (DB) No. 808 of 2024**

*5. We find that the appellant is a lady. From the FIR we find that there is no allegation that this appellant was found with any deadly weapon, though there is allegation against the others assaulting the deceased with sabal and axe.*

*6. Considering the fact that this appellant is a lady and as per the FIR she was not holding any deadly weapon when the assault had taken place, we are inclined to allow this interlocutory application. Accordingly, upon suspending the sentence, the appellant, above named,, is directed to be released on bail, during the pendency of this appeal, on furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Sessions Judge, Garhwa, in connection with S.T. NO. 32 of 2017, with a condition that the appellant shall appear and mark her attendance before the Registrar, Civil Court, Garhwa, once in every four months till the disposal of this appeal.*

53. It appears from the relevant paragraphs of the aforesaid order that the Co-ordinate Bench considering the fact that the appellant is a lady and as per the FIR she was not holding any deadly weapon had admitted the appellant on bail.

54. Now, coming to the second order dated 02.09.2024 passed in I.A No.8337 of 2024 in Criminal Appeal (DB) No.703 of 2024 and I.A No.8633 of 2024 in Criminal Appeal (DB) No.698 of 2024 respectively by which appellant namely Basmati Devi and Ramchandra Yadav have been granted bail after suspension of sentence during pendency of the appeal.

For ready reference, the said order is quoted as under:

**Order dated 02.09.2024 passed in I.A No.8337 of 2024 in Criminal Appeal (DB) No.703 of 2024 and I.A No.8633 of 2024 in Criminal Appeal (DB) No.698 of 2024**

5. Parties are related to each other. There is allegation that as the cow of the deceased had graze the crops of the accused persons, an altercation had taken place. The injured witness is P.W.-15. P.W.-15 in paragraph 7 has given vivid description of the occurrence. She stated that Awadhesh Yadav has assaulted the deceased. There is no allegation of giving assault upon the deceased by the appellant No.1 in Cr. Appeal (D.B.) No.703 of 2024.

6. Further, there is no such allegation against Ramchandra Yadav of giving fatal blow though from the evidence, we find that it is Awadesh Yadav, who with the sabal (iron rod) had assaulted the deceased.

7. Considering the statement of eye witness (P.W.-15) specially paragraphs 7 and 8, we are inclined to allow these interlocutory applications. Accordingly, upon suspending the sentence, the appellants, namely, Basmati Devi [Cr. Appeal (D.B.) No.703 of 2024] and Ramchandra Yadav [Cr. Appeal (D.B.) No.698 of 2024] are directed to be released on bail during the pendency of these appeals, on furnishing bail bonds of Rs.10,000/- (Rs. Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Sessions Judge, Garhwa in connection with Sessions Trial Case No.32 of 2017 with a condition that the appellants shall appear and mark their attendance before the Registrar, Civil Court, Garhwa, once in every four months till the disposal of these appeals.

55. It appears from the aforesaid order that the Co-ordinate Bench of this Court has gone into the merit of the case and while enlarging the co-accused, namely, Basmati Devi and Ramchandra Yadav on bail after suspending the sentence, has observed that Awadhesh Yadav has assaulted the deceased and there is no allegation of giving assault upon the deceased by the appellant No.1 in Cr. Appeal (D.B.) No.703 of 2024, i.e., Basmati Devi. The Co-ordinate Bench has further, taken into consideration that there is no such allegation against Ramchandra Yadav of giving fatal blow

though from the evidence, and it is Awadhesh Yadav, who with the sabal (iron rod) had assaulted the deceased.

56. Now, coming to third order dated 09.07.2025 passed in I.A. No. 5877 of 2025 by which the appellant namely Gudan Yadav @ Sant Yadav (appellant of Cr. Appeal (DB)No. 704 of 2024) has been granted bail after suspension of sentence during pendency of appeal, for ready reference same is being quoted as under:

**Order dated 09.07.2025 passed in I.A. No. 5877 of 2025 (Cr. Appeal (DB) No. 704 of 2024)**

*On consideration of the evidences of P.W12 and P.W.15, it appears that one injury was found on the scalp of the deceased, which can be attributed to Awadhesh Yadav. In the fardbeyan, the allegations are general and omnibus in nature. So far as the appellant is concerned, subsequently, it seems that P.W.15 has developed the case and has named the appellant of committing assault on the head of the deceased, though, it has also not been stated as to whether the same was with the blunt portion of the axe which would lead to a lacerated wound and therefore, it can be presumed that the same was with the sharp side of the tangi, but no such injury was found on the person of the deceased, which further more dilutes the case of the prosecution.*

*Regard being had to 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, Garhwa in connection with Sessions Trial Case No.32 of 2017, arising out of Bardiha P.S. Case No. 60 of 2015, corresponding to G.R. Case No. 2495/2015.*

57. It is evident from the aforesaid order that the co-ordinate Bench while allowing the prayer for suspension of the sentence of the co-accused, namely, Gudan Yadav @ Sant Yadav has categorically observed by taking into consideration of the evidences of P.W12 and P.W.15, that one injury was found on the scalp of the deceased, which can be attributed to

Awadhesh Yadav. It has further been observed that it seems that P.W.15 has developed the case and has named the appellant of committing assault on the head of the deceased, though, it has also not been stated as to whether the same was with the blunt portion of the axe which would lead to a lacerated wound and therefore, it can be presumed that the same was with the sharp side of the tangi, but no such injury was found on the person of the deceased, which further more dilutes the case of the prosecution.

58. Thus, from the aforesaid order, it is evident that the co-ordinate bench while allowing the prayer for suspension of sentence of the co-accused had appreciated the evidence at length and has delved deep into the evidences and has held that P.W.15(informant and sole injured eye-witness) has developed the case, but this Court amused by the observation of the co-ordinate bench reason being that it is settled position of law as per the ratio of **Omprakash Sahni (supra) and Preet Pal Singh (supra)** that at the stage of considering the suspension of sentence, the Court has only to see the *prima facie* case and it is not required to find the chink in the armor of the prosecution case.

59. In the backdrop of the aforesaid factual aspects and settled position of law as referred hereinabove this Court is now re-adverting to the factual aspects of the instant case in order to decide the issue of parity vis-à-vis the complicity of the present applicant in the alleged offence.

60. As discussed in the preceding paragraphs, it is evident that informant/injured sole eye-witness (P.W.15) had specifically stated that when her father tried to flee away then the present applicant/appellant had caught her father and thereafter assault was made upon him. She had further stated that the present applicant was armed with lathi.

61. Thus, from the aforesaid it is considered view of this Court that role of the present applicant is different to the others co-accused who have been granted bail by the co-ordinate Bench after suspension of sentence.
62. This Court, in view of the aforesaid on the basis of discussion made hereinabove is of the considered view that the name and role of present applicant/ appellant has specifically been narrated by the eyewitness, i.e., P.W.15 as such the case at hand would not come under the ambit of giving benefit of parity.
63. On the basis of discussion made hereinabove and by applying the proposition laid down for the purpose of applicability of principle of parity, in the light of the order passed by the Co-ordinate Bench in the case of the said co-accused is of the view that the principle of parity will not be applicable herein.
64. At the cost of repetition , it needs to refer herein that the Hon'ble Apex Court in the case of **Omprakash Sahni v. Jai Shankar Chaudhary & Anr., (supra)** has been pleased to hold that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted and while considering the bail the Court should take care of the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed. The Hon'ble Apex Court further held that the appellate Court should not reappreciate the evidence at the stage suspension of sentence and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

65. Thus, in the case of post-conviction bail, by suspension of operation of the sentence, the question of presumption of innocence does not arise and further in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted.
66. This Court, after having discussed the factual and legal issues as per the discussion made hereinabove, is of the view that the present interlocutory application is not fit to be allowed.
67. Accordingly, I.A. (Cr.) No. 15053 of 2025 stands dismissed.
68. Since the aforesaid observation of this Court is *prima facie* consideration for suspension of sentence only, therefore, it is made clear that any observation made hereinabove will not prejudice the case of the parties on merit since the appeal is lying pending for its consideration.

**(Sujit Narayan Prasad, J.)**

**I Agree.**

**(Arun Kumar Rai, J.)**

**(Arun Kumar Rai, J.)**

*Sudhir*  
*Jharkhand High Court,*  
*Dated:07/01/2026*  
*AFR*

Uploaded on 09/01/2026