

# SUPREME COURT OF INDIA

Akhilesh Kumar Sinha

Vs.

State of Bihar

(K.T.Thomas and R.P.Sethi JJ.)

13.04.2000

## ORDER

1. The petitioner stands convicted under Sec. 302 of the Indian Penal Code read with Section 34; IPC. He filed an appeal in 1998 before the High Court of Patna and then applied for suspension of the sentence. The High Court declined to do so. He then moved the High Court taking up his appeal out of turn or to suspend the sentence on which application the impugned order has been passed. It read thus :

This is appeal of the year 1998. Earlier the prayer for bail the appellant was rejected on 5.8.1998. The appellant went before the apex Court in SLA No. 23 of 1999 and the prayer for bail of the appellant was dismissed as withdrawn. In this Court the appeal of the year 1994 is being taken up for hearing. No case for grant of bail is made out. Accordingly the prayer for bail rejected.

2. If what the High Court observed is correct, the possibility that appeal being boarded for final hearing can only be in the year 2004 A convicted person being kept in jail pending appeal for such a long period is not a desirable course, but it is only one side of the picture As the petitioner is found guilty by a trial Court of the offence under Section 302, the appellate Court can normally presume that he is prima facie guilty of the offence as for suspending the sentence despite the pendency of the appeal. Of course it is open to the appellate Court even at that stage to consider whether it is a fit case for suspending sentence despite such presumption. This is the other side of the picture Striking a balance between the two we permit the petitioner to move the High Court again for suspension of the sentence if his appeal is not taken up for final hearing within two years from today. With these observation the special leave petition is disposed of.