**SUPREME COURT OF INDIA**

Sidharth Vashisht @ Manu Sharma

Vs.

State (N.C.T. Of Delhi)

Crl.A.No.179 of 2007

(C.K. Thakker and D.K. Jain JJ.)

12.05.2008

**JUDGMENT**

**C.K. Thakker, J.**

1. The present application is filed by the appellant-accused under Section 389 of the *Code of Criminal Procedure, 1973* (hereinafter referred to as `the Code') for suspension of sentence pending appeal in this Court and to release him on bail.

2. Since an appeal against an order of conviction and sentence recorded by the High Court of Delhi is admitted by this Court and awaits final hearing, we will not enter into larger questions and deal with the present application for suspension of sentence and bail.

3. Shortly stated, the case of the prosecution was that on April 29-30, 1999, a party was organized at `Tamarind Cafi' inside Qutub Colonnade. It was a private party where certain persons were invited and liquor was served. Jessica Lal (since deceased) and one Shyan Munshi were in charge of the bar. It was the allegation of the prosecution that appellant Sidhartha Vashisht @ Manu Sharma along with his friends came there and asked for liquor. Jessica Lal and Shyan Munshi did not oblige him by providing liquor since the bar was closed. According to the prosecution, the appellant got enraged on refusal to serve liquor, took out his .22 pistol and fired two rounds, first into the ceiling and the second at Jessica Lal. Jessica Lal fell down as a result of the shot which proved fatal and she died. According to the assertion of the prosecution, several persons witnessed the incident. Beena Ramani, who was present, stopped the appellant and questioned him as to why he had shot Jessica Lal. She also demanded weapon from the accused but the accused did not handover pistol and fled away.

4. FIR was lodged, a case was registered and investigation was carried out. At the trial, more than 100 witnesses had been examined. The trial Court acquitted the accused holding that it was not proved by the prosecution that the accused had committed the offence with which he, along with other accused, was charged.

5. The State preferred an appeal against an order of acquittal recorded by the trial Court. The High Court of Delhi held that the trial Court was wrong in acquitting the accused and the prosecution was successful in proving the guilt against the appellant (as well as two other accused) and accordingly recorded conviction inter alia for an offence punishable under Section 302, Indian Penal Code (IPC) and imposed sentence of imprisonment for life.

6. The High Court observed that it has "no hesitation in holding" that the appellant was guilty of an offence punishable under Section 302 read with Sections 201 and 120B, IPC and also under Section 27 of the *Arms Act, 1959* for having committed murder of Jessica Lal on April 29-30, 1999 at `Tamarind Cafi' and ordered him to undergo rigorous imprisonment for life and also imposed sentence for other offences.

7. With regard to the other two accused, however, the Court held that they were guilty for committing an offence punishable under Sections 201 and 120B, IPC.

8. The appellant-applicant approached this Court by instituting an appeal under Section 2(a) of the *Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970* as also under Section 379 of the Code. The appeal was placed for admission. On March 7, 2007, the appeal was admitted and notice was issued on application for bail. Counsel appeared on behalf of the respondent and accepted the notice. It was ordered to be listed in the first week of April, 2007, meanwhile, counter affidavit, if any, was to be filed.

9. On April 2, 2007 when the matter appeared on Board, the Court passed orders of bail in respect of other accused, but in the instant case (Crl.M.P. No. 1775 of 2007), the Court fixed final hearing of the matter. It, however, appears that the appeal could not be heard. On January 24, 2008, the Court ordered listing of appeals along with bail applications "before any other appropriate Bench" on 12th February, 2008. The matter was thus placed before this Bench.

10. In view of several other matters, however, the appeal could not be taken up for hearing. Mr. Ram Jethmalani, learned senior advocate, appearing for the appellant-accused, no doubt, requested the Court to take up the matter out of turn. He alternatively submitted that if the appeal is not heard, the application for bail may be heard as according to him, he did not press for bail earlier when the appeal was placed for admission hearing and was admitted since the Court had fixed final hearing of main matter. According to him, the appellant was in jail and if the appeal will not be heard for a considerable long time, serious prejudice will be caused to the accused. On the facts and in the circumstances, therefore, we directed the Registry to place the application for suspension of sentence and grant of bail on Board so that an appropriate order may be passed on the prayer of the applicant-appellant-accused.

11. We have heard learned counsel for the parties.

12. The learned counsel for the applicant submitted that no case has been made out by the prosecution against the appellant-accused. The trial Court, after considering the evidence of the prosecution witnesses in its entirety, recorded an order of acquittal in favour of the

accused. He submitted that the trial Court held that PW1--Deepak Bhojwani and PW30--Shravan Kumar had been `planted' by the prosecution. PW2-- Shyan Munshi had expressly stated that shots were fired by two persons and appellant-accused was not one of them. Neither PW1—Deepak Bhojwani, Nor PW2--Shyan Munshi, nor PW3—Shiv Dass Yadav, nor PW4--Karan Rajput were eye- witnesses. For rejecting ocular evidence of PW6 --Malini Ramani and PW20--Beena Ramani, cogent and convincing reasons have been recorded by the trial Court. It was not proved that Tata Safari was in possession of the appellant- accused, nor was there anything to show that he used the said vehicle on 29th April, 1999. Report of ballistic expert does not support prosecution and on that ground also, the trial Court was right in passing the order of acquittal.

13. According to the learned counsel, Beena Ramani--PW20, was not an eye-witness. A statement to that effect was made by the Public Prosecutor at the trial in the Sessions Court. It was also clear that a false Excise Case had been registered against the said witness and she was pressurized to depose in favour of prosecution and as soon as her evidence was over, she was obliged by compounding the offence on imposing fine which went to show that it was the systematic effort of the prosecution to involve the appellant-accused who was totally innocent. The counsel also submitted that photograph of the accused was collected by the Police during investigation and was shown to the prosecution witnesses and identification of the accused was meaningless.

> "Media had played active role and even before the conclusion of the trial, they had virtually described the applicant not as an `accused' but as a `convict' or an `offender'. According to the learned counsel, the trial Court dispassionately and objectively considered the evidence in its proper perspective without being influenced by extraneous factors and granted benefit of doubt to the accused. The High Court was `wholly' wrong in reversing the finding of the trial Court and in convicting the applicant and in imposing sentence of imprisonment for life. The order passed by the High Court, submitted the counsel, is not in consonance with law and the applicant has fair and good chance of his appeal being allowed. He is in jail since long and as the appeal is likely to take time, a reasonable prayer for suspension of sentence and grant of bail deserves to be accepted by enlarging the applicant-accused on bail on such terms and conditions as this Court deems fit."

14. Mr. Gopal Subramanyam, learned Addl. Solicitor General, on the other hand, strongly opposed the prayer made by the applicant of suspension of sentence and grant of bail. He submitted that the order of acquittal recorded by the trial Court was clearly wrong and against the evidence on record. The High Court, as a Court of `first appeal', considered the evidence and held that the trial Court was `wholly' wrong in not believing the prosecution witnesses. The High Court also observed that the grounds which weighed with the trial Court for not believing prosecution witnesses could not be said to be legal, proper or based on evidence on record. The counsel submitted that there was no reason for the trial Court not to believe evidence of PW1--Deepak Bhojwani, PW30- Shravan Kumar, PW20--Beena Ramani, PW6—Malini Ramani and other witnesses. The counsel submitted that the High Court considered in detail, the reasons recorded by the trial Court and rightly observed

that to describe a particular witness as `planted' by the prosecution is a serious matter and normally no Court of law would proceed on that basis. Mr. Subramanyam also submitted that from the prosecution evidence, it is clear that the applicant along with other accused came to Tamarind Cafi on 29th April, 1999, asked for liquor and when he was refused liquor on the ground that the bar was closed, he became very angry, took out his .22 pistol and fired two rounds; one towards ceiling and the other towards Jessica Lal due to which she died. This was witnessed by several persons who were present at that time. Some of them, however, did not support the prosecution. The learned Addl. Solicitor General submitted that the terror of the accused was clear from the fact that about two dozen witnesses had been turned hostile. The trial Court ought to have considered this aspect. But even otherwise, in view of the above situation, the witnesses who were examined and supported the prosecution ought to have been believed by the trial Court. It, however, failed to do so. The High Court was, therefore, `fully` justified in believing the evidence of those witnesses and in recording the order of conviction.

15. It was also stated that according to the High Court, after the commission of offence, the accused absconded. His farm house was raided by the police authorities during the course of investigation. He was neither found there nor did he surrender immediately. The High Court also recorded a finding that Tata Safari, used by the accused at the time he visited Qutub Colonnade was recovered from NOIDA which was removed from the place of offence. According to the High Court, the evidence on record showed that Tata Safari was parked at Qutub Colonnade in the night of April 29-30, 1999. The vehicle belonged to Piccadilly Agro Industries Limited of which the accused was admittedly a Director. The vehicle was surreptitiously removed from the scene of occurrence. The High Court noted that it was admitted by the accused that he was having licensed pistol of .22 bore. The High Court was also aware that several witnesses turned hostile and did not support the prosecution but from the available material, it was proved beyond reasonable doubt that it was the applicant who had visited Qutub Colonnade on the night of 29th/ 30th April, 1999 and demanded liquor and on refusal by Jessica Lal and Shyan Munshi, he became angry and fired two shots one of which hit Jessica Lal and proved fatal. It was, therefore, submitted by the learned Addl. Solicitor General that the order passed by the High Court is legal, valid and in consonance with law and no error has been committed by the High Court in setting aside the order of acquittal recorded by the trial Court.

16. We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or the other, therefore are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the evidence on record. It, however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal court. Initial presumption of innocence in favour of the accused, therefore, is no more available to the applicant.

17. In para 56, the High Court observed as under:

"56. In the totality of circumstances adduced from material on record, the judgment under challenge appears to us to be an immature assessment of material on record which is self-contradictory, based on misreading of material and unsustainable. We find that Beena Ramani has identified Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gil, Alok Khanna and Vikas Yadav to be the persons present at the Tamarind Cafi at the time of the incidence. She also saw Manu Sharma firing the fatal shot which hit Jessica Lal. Her testimony finds corroboration from the testimony of Malini Ramani and George Mailhot. There is evidence on record to show that Manu Sharma had a licensed pistol of .22 bore which he has not produced to establish his innocence and on the contrary has taken false plea that the pistol, its ammunition and licence had been removed by the Police on 30.4.1999. We also find from the material on record that Manu Sharma abandoned his vehicle while making good his escape. We also find that the ammunition used in the causing of the firearm injury to Jessica Lal was of .22 bore which Manu Sharma admittedly possessed and a similar live cartridge was recovered from the abandoned Tata Safari. From this, we have no hesitation in holding that Manu Sharma is guilty of an offence under Section 302 IPC for having committed the murder of Jessica Lal on 29/30.4.1999 at the Tamarind Cafi as also under Section 27 Arms Act". (emphasis supplied)

18. The High Court has also given cogent reasons for not accepting the view of the trial Court and grounds recorded for not believing prosecution witnesses.

19. Mr. Ram Jethmalani, learned senior advocate no doubt submitted that the trial Court was right in not relying upon the prosecution witnesses, but Mr. Gopal Subramanyam submitted that the approach of the trial Court was incorrect and improper. According to the High Court it was on the verge of `perversity'.

20. It is premature to express any opinion, one way or the other at this stage but the fact remains that the order of acquittal recorded by the trial Court has been set aside and the applicant-accused has been convicted for an offence punishable under Section 302, IPC and ordered to undergo imprisonment for life.

21. Mr. Ram Jethmalani, learned senior advocate, invited our attention to several decisions of this Court. Some of them relate to grant of bail at the pre-trial stage. The Courts in such cases have considered several factors, such as, there is a presumption of innocence in favour of an accused till it is established that he is guilty; he has to make preparation for his defence and he must have every opportunity to look after his case; it will be very difficult for an accused to make such preparation if he is in jail than he is out of jail. One of the considerations which a Court of law would keep in mind at that stage is to secure the attendance of the accused. Hence, on security being furnished, he is released on bail if the Court is satisfied that the case on hand was fit one to grant such concession in favour of the accused.

22. Before about eight decades, in the leading case of *Emperor v. Hutchinson*[1], (the Meerut Conspiracy case), Boys, J. observed:

> "As to the object of keeping an accused person in detention during the trial, it has been stated that the object is not punishment, that to keep an accused person under arrest with the object of punishing him on the assumption that he is guilty even if eventually he is acquitted is improper. This is most manifest. The only legitimate purposes to be served by keeping person under trial in detention are to prevent repetition of the offence with which he is charged where there is apparently danger of such repetition and to secure his attendance at the trial. The first of those purposes clearly to some extent involves an assumption of the accused's guilt, but the very trial itself is based on a prima facie assumption of the accused's guilt and it is impossible to hold that in some circumstances it is not a proper ground to be considered. The main purpose however is manifestly to secure the attendance of the accused". (emphasis supplied)

23. In concurring judgment, Mukherji, J. also stated;

> "The principle to be deduced from Sections 496 and 497, Criminal P.C., therefore is that grant of bail is the rule and refusal is the exception. That this must be so is not at all difficult to see. An accused person is presumed under the law to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to freedom and every opportunity to look after his own case. It goes without saying that an accused person, if he enjoys freedom, will be in a much better position to look after his case and to properly defend himself than if he were in custody. (emphasis supplied)

24. The above principle has been reiterated from time to time thereafter.

25. Section 389 of the Code expressly and specifically deals with suspension of sentence pending appeal and release of appellant on bail. It states;

> 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.
>
> (2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.
>
> (3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall--

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

26. Bare reading of the above provision makes it clear that during the pendency of appeal, an appellate Court is empowered to suspend sentence on the appellant by releasing him on bail. Such action, however, can be taken only after affording opportunity to the Public Prosecutor in case of offence punishable with death or imprisonment for life or imprisonment for ten years or more and after recording reasons in writing.

27.Mr. Jethmalani, relying on the decisions in *Kashmira Singh v. State of Punjab*[2], *Babu Singh & Ors. v. State of U.P.*[3], *Shailendra Kumar v. State of Delhi*[4], and other cases, submitted that one of the factors which weighed with this Court in granting suspension of sentence and releasing the applicant on bail is that in case of acquittal by the trial Court and conviction by the appellate Court, hearing of appeal takes long time and the applicant has to remain in jail.

28. As observed in those cases, the practice of not releasing a person on bail who had been sentenced for imprisonment for life under Section 302, IPC was that the appeal was likely to be heard in near future. But if such appeal would not be heard for long and not disposed of within a `measurable distance of time', it would not be in the interest of justice to keep such person in jail for a number of years and it would be appropriate if the power under Section 389 of the Code is exercised in favour the applicant.

29. In Kashmira Singh, this Court stated;

"Now, the practice in this Court as also in many of the High Court has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not be release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that

the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you much remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence". (emphasis supplied)

30. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate Court, he cannot be said to be an `innocent person' until the final decision is recorded by the superior Court in his favour.

31. Mr. Gopal Subramanyam, learned Addl. Solicitor General invited our attention to *Akhilesh Kumar Sinha v. State of Bihar*[5], *Vijay Kumar v. Narendra & Ors.*[6], *Ramji Prasad v. Rattan Kumar Jaiswal & Anr.*[7], *State of Haryana v. Hasmat*[8], *Kishori Lal v. Rupa & Ors.*[9], *and State of Maharashtra v. Madhukar Wamanrao Smarth*[10].

32. In the above cases, it has been observed that once a person has been convicted, normally, an appellate Court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter it is open to the appellate Court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the Court should consider all 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, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

33. In Hasmat, this Court stated;

> "6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the applicant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant, aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine". (emphasis supplied)

34. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail.

35. On the facts and in the circumstances of the case, in our considered opinion, this is not a fit case to exercise power under Section 389 of the Code. Though the trial Court has acquitted the applicant-accused for the offences with which he was charged, the High Court reversed the order of acquittal and convicted him under Section 302, IPC and ordered him to undergo rigorous imprisonment for life. Being aggrieved by the said order, he has filed an appeal which has been admitted, is already on board and awaits final hearing. Hence, within `measurable distance of time' the appeal is likely to be heard. Keeping in view the seriousness of offence, the manner in which the crime was said to have been committed and the gravity of offence, we are of the view that no case has been made out by the applicant-appellant for suspension of sentence and grant of bail. The application deserves to be dismissed and is accordingly dismissed.

36. Before parting with the matter, we may clarify that we may not be understood to have expressed any opinion on merits of the matter one way or the other and all the observations made by us hereinabove should be taken as confined to dealing with the prayer of the applicant-appellant under Section 389 of the Code. As and when the main matter i.e. criminal appeal will come up for hearing, it will be decided on its own merits without being inhibited or influenced by the observations in this order.

37. The application is accordingly disposed of.

*[1]AIR 1931 All 356: 32 CrLJ 1271: 33 IC 842* *[2](1977) 4 SCC 291* *[3](1978) 1 SCC 579*
*[4](2000) 4 SCC 178: JT 2000 (1) SC 184* *[5](2000) 6 SCC 461*
*[6](2002) 9 SCC 364 : JT 2004 Supp (1) SC 60* *[7](2002) 9 SCC 366 : JT 2002 (7) SC 477*
*[8](2004) 6 SCC 175 : JT 2004 (6) SC 6* *[9](2004) 7 SCC 638 : JT 2004 (8) SC 317*
*[10](2008) 4 SCALE 412 : JT 2008 (4) SC 461*