

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
I.A. No.9705 of 2019
In
Cr. Appeal (D.B) No.991 of 2019**

Sanju Mandal **Appellant**

Versus
The State of Jharkhand **Respondent**

**CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA
HON'BLE MR. JUSTICE RAJESH KUMAR**

For the Appellant :Mr. R.R. S. Singh, Advocate
For the State :APP

**04/Dated: 13.02.2020
I.A. No.9705 of 2019**

- 1.** This interlocutory application has been filed under Section 389 (1) of the Code of Criminal Procedure for suspension of the sentence and grant of ad-interim bail, to the appellant during the pendency of this appeal.
- 2.** The appellant has been convicted for the offense under Section 302 of Indian Penal Code and sentenced to undergo imprisonment for life and fine of Rs.20,000/- for the offence under Section 302 of Indian Penal Code and in default of fine R.I. for two years and sentenced to undergo R.I. for 3 years and fine of Rs.10,000/- for the offence under Section 201 of Indian Penal Code in case of default of fine R.I. for one year.
- 3.** Having heard the learned counsel for the appellant and learned APP and on perusal of record it appears that the appellant has been convicted on the basis of last seen theory. The allegation is that the appellant and co-accused on 23.09.2007 had come and taken the informant's brother (since deceased) with them. Thereafter, the dead body of informant's brother was found on 04.10.2007 with multiple injuries. P.W.-4 has also stated that the deceased had gone to do his work but when he did not return missing report was lodged by the father. P.W.-8 the Doctor has opined that the time of death as more than seven days. P.W.-7 has stated that the appellant had misbehaved with her due to which the deceased had objected whereupon the appellant had given life threats. It is not explained as to why the deceased had gone with the appellant when it has been alleged that the appellant had given life threats to the deceased.

Learned counsel has drawn our attention to Ext.- A, i.e.,

the Sanha dated 28.09.2007 lodged by the father of the deceased wherein it is not stated that the deceased was taken by the appellant.

In view of the materials on record, we are inclined to suspend the sentence and enlarge the appellant on bail, during the pendency of the appeal, on his furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-III, Rajmahal, in S.T. Case No.10 of 2010, (arising out of Rajmahal P.S. Case No.196 of 2007, corresponding to G.R. Case No.431 of 2007).

4. The appellant shall remain present before the Court, as and when the appeal is taken up for hearing, failing which, his bail shall be cancelled.

5. I.A. 9705 of 2019 stands allowed.

6. On perusal of the judgment of the trial court it appears that there is no mention of Ext.-A which was brought on record by the defence. It is settled proposition that the evidence of the defence has to be considered and discussed and reasons have to be assigned for disbelieving the evidence adduced by the defence. Surprisingly the trial court though has marked the document as Ext.-A, but has not made any mention or discussion of the Ext.-A neither noted it in the list of exhibits.

7. Let a copy of the order alongwith copy of the judgment be sent to the Director Judicial Academy Jharkhand, for issuing necessary instruction and for imparting training to the trial judges on the question that the evidence of defence is not to be ignored rather like any other evidence, the evidence of defence has to be tested on the touchstone of reliability credibility and trustworthiness and thereafter the court is required to pass necessary order. Registry shall place a copy of this order alongwith a copy of the judgment before the Hon'ble Administrative Judge, Sahibganj Judgeship, for needful.

(AMITAV K. GUPTA, J.)

(RAJESH KUMAR, J.)