

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 599 of 2021**

Fekuram Panika S/o Late Jagarsai Panika, Aged About 40 Years R/o - Village - Chandarpur (Dudhara), Police Station - Surajpur, Tahsil and District - Surajpur Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh, Through The Police Station - Surajpur, District - Surajpur Chhattisgarh.

---- Respondent**Division Bench:-****Hon'ble Shri Justice Sanjay K. Agrawal &****Hon'ble Shri Justice Rakesh Mohan Pandey**

Bilaspur								
20/12/2022	Mr. J.A. Lohani, Advocate for the appellant. Mr. Anmol Sharma, P.L. for the State/respondent. Heard on I.A. No.1 of 2021, an application for suspension of sentence and grant of bail to the appellant. The appellant has been convicted and sentenced by the judgment of conviction and order of sentence dated 18-3-2021 passed in Sessions Trial No.38 of 2019 by the Learned Sessions Judge, Surajpur, District Surajpur (C.G.) in the following manner :- <table><tr><th>Sl. No.</th><th>Conviction</th><th>Sentence</th></tr><tr><td>1.</td><td>U/s 302/ 34 of the</td><td>Life imprisonment and fine of</td></tr></table>		Sl. No.	Conviction	Sentence	1.	U/s 302/ 34 of the	Life imprisonment and fine of
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	IPC	Rs.500/- in default of payment of fine R.I. for 1 month.
The case of the prosecution is that on 30.5.2016, deceased – Dharmendra Singh went alongwith the appellant on his scooty but he did not return by night and on the next date 31.5.2016 at about 6:00 am, his dead-body was found in front of house of Birbal Gond. After autopsy, the viscera was preserved and the same was sent for FSL and vide FSL report Ex.P/19, presence of Ethyl alcohol and Monocrotophos pesticide was found and the doctor has opined the death on account of administration of poison. The appellant and co-accused – Birbal Gond were prosecuted before the learned trial Court. Learned trial Court acquitted co-accused – Birbal Gond and convicted the present appellant only relying on the theory of last seen together as according to Ransai Sandilya (PW-1), Jitendra Singh (PW-2) and Premlata Singh (PW-7), the deceased was seen in the company of the present appellant while he was going in the scooty of present appellant and on the next morning, his dead-body was found. Learned counsel for the appellant submits that except the last seen together there is no other material available against him on record. He further submits that the deceased was seen in the company of the present appellant on 30.5.2016 at about 6-7 pm whereas, his dead-body was found on 31.5.2016 at about 6-7 am in front of the house of the Birbal Gond. He also submits that the evidence of last seen is a weak type of evidence and it is only evidence relied by the trial Court. There is no memorandum or		



seizure of the present appellant even the container of the poison has not been seized. Hence, the appellant is entitled for suspension of sentence and grant of bail.

On the other hand, learned counsel for the State would oppose the application for suspension of sentence and grant of bail. He further submits that the prosecution has established the guilt of the present appellant and there is evidence of Ransai Sandilya (PW-1), Jitendra Singh (PW-2) and Premlata Singh (PW-7) regarding last seen together and thus he is not entitled for suspension of sentence and grant of bail.

We have heard learned counsel for the parties and perused the record.

From record, it appears that the present appellant has been convicted solely on the basis of last seen together. It is not in dispute that the deceased was seen in the company of present appellant on 30.5.2016 at about 6-7 pm and his dead-body was found in front of the house of Birbal Gond on 31.5.2016 at about 6-7 am. Nothing has been seized from the possession of the present appellant and the prosecution could not prove the clear motive of the accused to administer poison to the deceased, the accused had the poison in his possession and he had an opportunity to administer the poison to the deceased.

Considering the above aspect of the matter, we are inclined to allow this application for suspension of sentence and grant of bail to the appellant.



Consequently, I.A. No.1 of 2021 for suspension of sentence and grant of bail to the appellant is hereby allowed.

It is directed that the jail sentence imposed upon the appellant shall remain suspended during the pendency of this appeal and he shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety in like sum to the satisfaction of the trial Court for his appearance before the Registry of this Court on **27th of February, 2023**. He shall thereafter appear before the 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 him by the said Court, till disposal of this appeal.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Rakesh Mohan Pandey)
Judge