

**SYNOPSIS**

1. The Petitioner is constrained to file the present Special Leave Petition against the order dated 12.07.2019 passed by the Hon'ble High Court of Jharkhand at Ranchi, wherein, the Hon'ble High Court has erroneously suspended the sentence awarded by the Ld. Trial Court against the Respondent and enlarged the Respondent on bail in [Fodder Scam] Case No. RC64(A)/96-Pat.

2. It is submitted that the impugned order dated 12.07.2019 has been passed by the Hon'ble High Court, despite the fact that vide order dated 10.04.2019 this Hon'ble Court, after perusing all the material available on record and after duly appreciating the 'half sentence served theory' canvassed by the respondent refused to suspend the sentence in three (3) Fodder Scam Cases where he was convicted. It is submitted that before the Hon'ble Supreme Court the contention of the respondent was that he had served a period of 21 months and 9 days in the present RC which was half of the alleged 3 ½ years awarded to him in RC64(A)/96-Pat.

3. It is submitted that there was no change in circumstance and despite the same a fresh application bearing I.A. No 5222 of 2019 dated 10.06.2019, seeking suspension of sentence came to be filed on behalf of the respondent within a short span of less than 90 days, once again claiming that the respondent has already undergone half sentence and hence deserves to be enlarged on bail by suspending his sentence in RC64(A)/96-Pat.

It is submitted that in complete disregard to the mandate of Section 31 and 427 of the Cr.P.C, the said application has been erroneously allowed by the Hon'ble High Court vide the impugned order on the ground that the respondent has served half of the sentence in RC64(A)/96-Pat.

4. It is submitted that the contention of the petitioner/CBI before this Hon'ble Court, in the previous round of litigation, was that the respondent

has been convicted in four [4] separate Fodder Scam Cases, wherein, in each case the trial has resulted in conviction for two (2) offences i.e. one under IPC and the other under the PC Act. Furthermore, while convicting the respondent in present case i.e. RC64(A)/96-Pat., Ld. Trial Court did not clarify whether the sentences awarded for said two offences were to run concurrently or consecutively. It is further submitted that Ld. Trial Court has awarded consecutive sentences in RC38(A)/96-Pat., whereas concurrent sentences in RC68(A)/96-Pat. and RC20(A)/96-Pat.

5. As such, in so far as sentence awarded to the respondent in this case, it was the contention of the Petitioner/ CBI that in view of the Section 31 of the Cr.P.C. and in absence of any direction by the Ld. Trial Court that, the sentence recorded by it separately for the IPC offence and the PC Act, 1988 offence were to run concurrently, the same were to run consecutively, successively and one after the other.

6. Accordingly, it was submitted by the petitioner before this Hon'ble Court, in the previous round of litigation, that the total sentence of **(i)** 3½ years in RC64(A)/96-Pat; **(ii)** 7 years in RC38(A)/96-Pat; and **(iii)** 5 years in RC68(A)/96-Pat. as stated by the respondent was misleading and false as the total respective sentence(s) awarded to the respondent as per mandate of Section 31 of the Cr.P.C. was **(i)** Imprisonment for 7 years [3½ years for IPC offences + 3½ years for PC Act offences] in RC64(A)/96-Pat; **(ii)** R.I. for 14 years [7 years for IPC offences + 7 years for PC Act offence] in RC38(A)/96-Pat; and **(iii)** 5 years for IPC offence and 5 years for PC Act offences in RC68(A)/96-Pat. The details of the sentences awarded to the respondent which was shown to this Hon'ble Court is summarised in the following chart:-

Sl. No.	Total No. of Cases related to the respondent Lulu Yadav	Number of Convicts	Amount Involved	Sentence to the Petitioner
1.	RC64(A)/96-Pat. SLP (Crl) 2219/2019	16	Rs. 89 Lakhs	<b>Imprisonment for 7 years [3 ½ years for IPC offence + 3 ½</b>

	<p><b>Date of Judgement:-</b> 23.12.2017.  <b>Name of Treasury:-</b> Deoghar  <b>Period of offence:-</b> 1991-94</p>			<p><b>years for PC Act offence]</b> and fine of Rs. 5 lakhs in IPC + 5 Lakhs in PC Act] in default of payment of fine imprisonment for 6 months.</p> <p><b>Note:-</b>The respondent claims the sentence to be of 3 ½ years only.</p> <p><b>Note:-</b>A Criminal Appeal for enhancement of sentence of the Respondent and 5 other co-convicts in this Case is pending before the Hon'ble Jharkhand High Court at Ranchi.</p>
2.	<p>RC20(A)/96-Pat  <b>Date of Judgement:-</b> 30.09.2013 and 29.05.2019.  <b>Name of Treasury:-</b> Chaibasa  <b>Period of offence:-</b> 1994-95</p>	55	37.70 Crores	<p><b>R.I. of 5 years in IPC and R.I. of 5 years in PC Act</b> and total fine of Rs. 25 lakhs and in default of payment of fine R.I. for six months.</p> <p><u>Released on bail on 13.12.2013.</u></p>
3.	<p>RC38(A)/96-Pat.  <b>SLP CrI. No 2451/2019</b>  <b>Date of Judgement:-</b> 19.03.2018.  <b>Name of Treasury:-</b>Dumka  <b>Period of offence:-</b>1995 -96</p>	19	Rs.3.76 Crores	<p><b>R.I of 14 years [7 years in IPC + 7 years in PC Act]</b> and fine of Rs. 60 lakhs and in default of payment of fine R.I. for 2 years.</p> <p><b>Note:-</b> The respondent claims the sentence to be of 7 years only.</p>
4.	<p>RC68(A)/96-Pat.  <b>SLP CrI 2447/2019</b>  <b>Date of Judgement:-</b> 24.01.2018.  <b>Name of Treasury:-</b> Chaibasa  <b>Period of offence:-</b> 1992-93</p>	50	Rs. 33.13 Crores	<p><b>R.I of 5 years in IPC and R.I of 5 years in PC Act</b> and fine of Rs. 5 lakhs in each offences and in default of payment of fine R.I. for 1 year each.</p> <p><b>Note:-</b> The respondent claims</p>

				the sentence to be of 5 years only.
5.	RC47(A)/96-Pat	NA	Rs.139 Crores	Under Trial Case, Stage: 313 Cr.P.C.
6.	RC63(A)/96-Pat	NA	Rs. 45 Lakhs	Under Trial Case, Stage: Prosecution Evidence at Patna.

7. Apart from the above, it was further the contention of the petitioner CBI that not only, the respondent was awarded consecutive sentences in the present case i.e. RC64(A)/96-Pat., but while recording the conviction and awarding the sentences, the Ld. Trial Court had also not directed that the sentence awarded in the respective cases will run concurrently with the sentence already granted in the previous trial.

8. As such, it is also the case of the petitioner CBI that in view of the clear mandate of Section 427 of the Cr.P.C, since the respondent was already awarded a sentence of 5 years [5 for IPC offence and 5 years for PC Act offence] in RC20(A)/96-Pat (*1<sup>st</sup> Sentence*) vide order dated 30.09.2013 & 03.10.2013, therefore, the period undergone was to be first apportioned for sentence awarded for the said RC and the sentence awarded for:-

*2<sup>nd</sup> Sentence* - Imprisonment for 7 years [3 ½ years for IPC offences + 3 ½ years for PC Act offences] years in RC64(A)/96-Pat [present case] awarded vide Judgment dated 23.12.2017 & 06.01.2019;

*3<sup>rd</sup> Sentence*- R.I. for 5 years for IPC offence and R.I. for 5 years for PC Act offences in RC68(A)/96-Pat awarded vide Judgement dated 24.01.2018; and

*4<sup>th</sup> Sentence*- R.I for 14 years [7 years for IPC offences + 7 years for PC Act offence] in RC38(A)/96-Pat awarded vide Judgment dated 19.03.2018 & 24.03.2018.

The sentence was to commence at the expiration of the imprisonment granted in previous case in the chronology highlighted above.

9. Apart from the above, it was also pointed out by the petitioner CBI that out of the period of:-

- i) 22 months in the present Case i.e. RC64(A)/96-Pat (SLP (CrI.) No. 2219 of 2019) the respondent had served sentence post conviction only for 3 months approx. in Jail.
- ii) 13 months in RC68(A)/96-Pat (SLP (CrI.) No. 2447 of 2019) the respondent had served sentence post-conviction only for 2 ½ months approx. in Jail.

and has remained in hospital for a period of 8 ½ months approx. on the ground that his condition is so bad that he cannot be housed in a Jail.

10. It was also pointed out by the petitioner that in 20 months in RC38(A)/96-Pat [SLP (CrI.) 2451 of 2019] where the respondent was convicted for 14 years [7 years +7 years] he had not served jail sentence even for a single day and had remained in hospital ever since his conviction and sentence was pronounced. It was also duly pointed out by the petitioner CBI that during the period in which the respondent remained in hospital, he is not only granted a special paying ward with all facilities but he was virtually conducting his political activities from there for which the petitioner CBI produced the visitor's register.

11. In so far as the medical condition of the respondent was concerned, it was the case of the petitioner that the same was only an artifice to mislead this Hon'ble Court, in as much as, the respondent who claimed to be so unwell that he could not even remain in jail but was required to be hospitalized, suddenly claimed to be fully fit physically and sought bail, inter alia, on the ground that being a Founder and President of Rashtriya

Janata Dal, a political party, his release is required to guide the party and carry out all essential responsibilities as a President of the party in the ensuing General Election to the Lok Sabha in the next few months.

Thus, it was the case of the petitioner that the respondent has been awarded a total sentence of 31 years i.e. 372 months in four cases keeping in view the mandate of Section 31 and 427 of Cr.P.C. In the present case i.e. RC64(A)/96-Pat, he has been awarded a sentence of 7 years [3 ½ years for IPC offence and 3 ½ for PC Act offence] i.e. cumulatively 84 months out of which he has undergone only 31 months approx. i.e. 11 months approx. before the conviction and 3 months after the conviction in Jail and for the remaining period of 17 months, he remained in hospital on medical grounds.

12. It is respectfully submitted that after taking into consideration aforesaid legal contention of the petitioner, the merits of the case as pointed out by the respondent during the bi-partite hearing held in the said matter, this Hon'ble Court was pleased to dismiss the SLP(s) filed by the respondent vide its order dated 10.04.2019. For ready reference the said order dated 10.04.2019 is quoted herein below:-

*“Having heard learned counsel for the petitioners and upon perusing the relevant material, we are not inclined to interfere.  
The special leave petitions are accordingly dismissed.  
Pending interlocutory applications, if any, shall stand disposed of.”*

13. Thus, from a bare perusal of the aforesaid order passed by this Hon'ble Court, it is clear that the respective orders dated 10<sup>th</sup> January, 2019 passed by the Hon'ble High Court in :-

- (i) I.A. No. 11057 of 2018 in Cr. Appeal (SJ) No. 138 of 2018 arising out of his conviction in connection with the instant R.C. Case No.64(A)/1996 Pat [present case – 2<sup>nd</sup> Sentence],;

- (ii) I.A. No. 1010 of 2018 in Cr. Appeal (S.J) No. 207 of 2018 arising out of the conviction of the respondent in connection with R.C. Case No. 68(A)/1996 [*3<sup>rd</sup> Sentence*]; and
- (iii) I.A. No. 11049 of 2018 in Cr. Appeal (S.J) No. 668 of 2018 arising out of his conviction in connection with R.C. Case No. 38(A)/1996-Pat [*4<sup>th</sup> Sentence*]

These SLPs had merged into the order dated 10.04.2019 passed by this Hon'ble Court, as the said order was passed by this Hon'ble Court after considering the merit of the matter; after hearing the parties and after perusing the material on record; and therefore, any fresh application seeking suspension of the sentence could have been filed and allowed only in case of any substantial change in circumstances. In absence of any substantial change in circumstances, it was completely impermissible for the Hon'ble High Court to entertain and grant such a relief, when the very same relief was rejected by this Hon'ble Court.

14. However, the Hon'ble High Court in complete misreading of law, entertained the fresh I.A. 5222 of 2019, within a span of less than 90 days, on the ground that the previous order passed by the Hon'ble High Court rejecting the suspension of sentence application of the respondent did not merge with the order dated 10.04.2019 passed by this Hon'ble Court and since the respondent has already undergone 26 months against the sentence of 3 ½ years granted to him [i.e. half sentence] therefore his sentence deserved to be suspended.

15. It is submitted that the impugned order passed by the Hon'ble high Court is not only in complete disregard to the mandate of Section 31 and 427 Cr.P.C., but is also in teeth of the order passed by this Hon'ble Court dated 10.04.2019 and hence deserves to be set aside.

16. In so far as the issue of parity is concerned, the petitioner CBI humbly submits that the petitioner is availing such legal remedies as available to it to get the said orders set aside. It is submitted that in all the said matter, the Hon'ble High Court has committed the error of not advertng to the Section 31 and 427 of Cr.P.C. It is submitted that since in all the Fodder Scam Cases, there is no authoritative view that the sentence in individual FIRs will not only run consecutively, but sentence in different FIRs will run consecutively after the expiration of the sentence awarded in the previous case, therefore, it would be just and proper that this Hon'ble Court finally clarifies the existing legal position so that further remedies can be taken by the petitioner in all the cases where co-convicts sentences have been suspended.

17. Without prejudice to the above, in so far as the respondent is concerned, it is the respectful submission of the petitioner that his case is completely distinct and different from the cases of co-convict. It is stated that the respondent was the kingpin, the main conspirator and benefactor who devised and executed the Fodder Scam Cases by abusing his official position and by dishonestly and fraudulently misappropriating the Government money by withdrawing huge amounts in excess of actual allotments from District Treasury, Deoghar on the basis of forged allotment and sub-allotment letters.

It is submitted that the said Fodder Scam Case is one in point of time case which not only shook the conscience of the nation, but has considerably jeopardised the majesty and pride which the public offices has been conferred constitutionally and has eroded public faith in the purity and probity of working of the said offices. It is submitted that suspending the sentence of the respondent will send a wrong message in so far as sentencing policy and zero tolerance policy in corruption cases of this Hon'ble Court is concerned.

18. It is respectfully submitted that the petitioner has been awarded a total sentence of 31 years i.e. 372 months as per the mandate of Section 31 and 427 of Cr.P.C. In the present case only he has been awarded a sentence of 7 year [3 ½ years for IPC offence and 3 ½ years for PC Act offence] i.e. cumulatively 84 months out of which he has undergone only 31 months approx. During the said period of time also he has remained in hospital for 17 months approx. As such the impugned order passed by the Hon'ble High Court suspending the sentence of the respondent deserves, without any substantial change in circumstances, post 10.04.2019 to be set aside.

Hence, the present Special Leave Petition.

**LIST OF DATES**

<b>DATE</b>	<b>EVENT</b>
15.05.1996	FIR being RC 64A/(96)-Pat was registered by the Petitioner agency under Sections 120B, 418, 420, 467, 468, 471, 477A, 409, 201, 511 IPC and Section 13(2) r/w 13(1)(c) & (d) of PC Act, 1988 against 29 accused persons in compliance of orders passed by the Hon'ble Patna High Court on 11.03.1996 and upheld by the Hon'ble Supreme Court on 19.03.1996.
28.10.1997	Petitioner CBI filed Chargesheet in the aforesaid FIR being RC 64A/(96)-Pat against 34 accused persons including the present Respondent under Sections 120B, 418, 420, 467, 468, 477A, 409, 201, 511 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.
25.08.2004	Supplementary Chargesheet has been filed against 4 accused persons under Sections 120B, 418, 420, 467, 468, 477A, 409, 201, 511 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.

30.09.2013, 03.10.2013 and 29.05.2019.	The Ld. Trial Court vide Judgment dated 30.09.2013 passed in RC20(A)/96-Pat [Chaibasa treasury-defalcated amount 37.70 Crores] convicted the Respondent and 54 others. The respondent in the said case was convicted for R.I. 05 years for IPC offence and 05 years for PC Act offence respectively and total fine of Rs. 25 lakhs in default of payment of fine further R.I. for six months. The sentences are ordered to run concurrently.
23.12.2017 & 06.01.2018	<p>The Ld. Trial Court convicted and sentenced 16 accused persons including the present Respondent in RC64(A)/96-Pat. The Respondent was convicted for imprisonment of 3 ½ years under Sections 120B r/w 420/467/468/471/477A IPC and for imprisonment of 3 1/2 years for the offences committed under Sections 13(2) r/w 13(1) (c)&amp;(d) of PC Act, 1988. A true copy of the Judgment and Order dated 23.12.2017 is annexed herewith as <b>Annexure P-1</b>. (Pages __ to __). A true copy of the Judgment and Order on sentence dated 06.01.2018 is annexed herewith as <b>Annexure P-2</b>. (Pages __ to __)</p> <p>Note:-The Ld Trial Court while awarding the said sentence did not direct that the respective sentences for separate offences awarded under IPC and PC Act would run concurrently or consecutively.</p>
24.01.2018	The respondent was convicted and sentenced in RC68(A)/96-Pat [another Chaibasa Treasury Case – amount of defalcation Rs.33.13 Crores] to undergo R.I 5 years for IPC and 5 years for PC Act offences and fine of

	Rs. 5 lakhs for each offences of IPC and PC Act respectively and in default to further undergo R.I. for 1 year. The sentences are ordered to run concurrently.
19.03.2018 & 24.03.2018	The respondent was convicted and sentenced in RC38(A)/96-Pat [Dumka treasury] and was sentenced to undergo R.I. for 14 years [7 years + 7 years] and fine of Rs. 60 lakhs and in default of payment of fine, to further undergo R.I. for 2 years. The Ld. Trial Court has directed to run the sentences consecutively.
12.01.2018	<p>The Respondent filed an appeal being Cr. Appeal (S.J) No. 138 of 2018 before the Hon'ble High Court of Jharkhand against his conviction and sentence.</p> <p>The respondent also filed the following appeals challenging his conviction:-</p> <p>(i) Cr. Appeal (S.J) No. 207 of 2018 arising out of the conviction of the respondent in connection with R.C. Case No. 68(A)/1996 [3<sup>rd</sup> Sentence]; and</p> <p>(ii) Cr. Appeal (S.J) No. 668 of 2018 arising out of his conviction in connection with R.C. Case No. 38(A)/1996-Pat [4<sup>th</sup> Sentence]</p>
23.02.2018	The Hon'ble High Court dismissed an application filed by the Respondent being IA No. 528 of 2018 in Cr. Appeal (S.J) No.138 of 2018 in Hon'ble High Court wherein the Respondent had prayed for suspension of sentence and grant of bail. A true copy of the order dated 23.02.2018 is annexed herewith as <b>Annexure P-3</b> . (Pages __ to __)

03.10.2018	The Petitioner CBI filed an appeal being Cr. Appeal (S.J) No. 1473 of 2018 before the Hon'ble High Court of Jharkhand for enhancement of sentences in respect of the present Respondent.
10.01.2019	<p>The Hon'ble High Court dismissed an application filed by the Respondent being I.A. No. 11057 of 2018 in Cr. Appeal (S.J) No.138 of 2018 in the Hon'ble High Court wherein the Respondent had prayed for suspension of sentence and grant of bail. A true copy of the order dated 10.01.2019 passed by the Hon'ble High Court is annexed herewith as <b>Annexure P-4</b>. (Pages __ to __)</p> <p>Vide the order of the same day the Hon'ble High Court also dismissed the application of the respondent for suspension of sentence in the other matters which are detailed here in below:-</p> <ul style="list-style-type: none"><li>(i) I.A. No. 1010 of 2018 in Cr. Appeal (S.J) No. 207 of 2018 arising out of the conviction of the respondent in connection with R.C. Case No. 68(A)/1996 [<i>3<sup>rd</sup> Sentence</i>]; and</li><li>(ii) I.A. No. 11049 of 2018 in Cr. Appeal (S.J) No. 668 of 2018 arising out of his conviction in connection with R.C. Case No. 38(A)/1996-Pat [<i>4<sup>th</sup> Sentence</i>]</li></ul>
10.04.2019	The Respondent approached this Hon'ble Court vide SLP (Cr1.) No. 2219 of 2019 against the order dated 10.01.2019 wherein his application for suspension of sentence and grant of bail was dismissed. This Hon'ble Court vide its order dated 10.04.2019 dismissed the aforesaid SLP as being devoid of merits. A true copy of

	<p>the order dated 10.04.2019 passed by this Hon'ble Court is annexed herewith as <b>Annexure P-5</b>. (Pages __ to __)</p> <p>The details of the SLPs dismissed by this Hon'ble Court vide the above order dated 10.04.2019 are here under:-</p> <p>(i) SLP (Crl.) No. 2219 of 2019 filed against order passed in I.A. No. 11057 of 2018 in Cr. Appeal (SJ) No. 138 of 2018 arising out of his conviction in connection with the instant R.C. Case No.64(A)/1996 Pat [present case – <i>2<sup>nd</sup> Sentence</i>];;</p> <p>(ii) SLP (Crl.) No. 2447/2019 filed against order passed in I.A. No. 1010 of 2018 in Cr. Appeal (S.J) No. 207 of 2018 arising out of the conviction of the respondent in connection with R.C. Case No. 68(A)/1996 [<i>3<sup>rd</sup> Sentence</i>]; and</p> <p>(iii) SLP (Crl.) No. 2451 of 2019 filed against order passed in I.A. No. 11049 of 2018 in Cr. Appeal (S.J) No. 668 of 2018 arising out of his conviction in connection with R.C. Case No. 38(A)/1996-Pat [<i>4<sup>th</sup> Sentence</i>]</p>
10.06.2019	<p>The Respondent again filed an application being I.A. No. 5222 of 2019 in Crl. Appeal (S.J.) No. 138/2018 before the Hon'ble High Court of Jharkhand wherein, he once again prayed for suspension of sentence and grant of bail. A true copy of the application filed by the Respondent is annexed herewith as <b>Annexure P-6</b>. (Pages __ to __)</p>
03.07.2019	<p>The petitioner filed its counter affidavit to the aforesaid application filed by the respondent. A true copy of the</p>

	counter affidavit filed by the Petitioner is annexed herewith as <b>Annexure P-7</b> . (Pages __ to __)
10.07.2019	The respondent filed a supplementary affidavit in the matter. A true copy of the supplementary affidavit filed by the Respondent is annexed herewith as <b>Annexure P-8</b> . (Pages __ to __)
12.07.2019	The Hon'ble High Court passed the impugned order and allowed the application being IA No. 5222 of 2019 for suspension of sentence and grant of bail filed by the Respondent.
__.12.2019	Hence, the present SLP.