
(2019) 03 RAJ CK 0026

In the Rajasthan High Court

Case No : Criminal Miscellaneous Suspension Of Sentence Application No. 257
Of 2019 In Criminal Appeal No. 35 Of 2019

Atul Thakre S/o Nandlal Thakre

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 325
Code Of Criminal Procedure, 1973 — Section 389

Citation : (2019) 03 RAJ CK 0026

Hon'ble Judges : Sandeep Mehta, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Kaushal Gautam, Anil Joshi

Final Decision : Disposed Off

Judgement

Heard learned counsel for the appellant-applicant and learned Public Prosecutor on the application for suspension of sentence. Perused the material available on record.

It is contended by learned counsel for the appellant-applicant that the prosecution has set up omnibus allegations against all the convict persons i.e. Khema @ Khem Singh, Gaurav, Nitesh Singh @ Monu and the present applicant. He further submits that the application for suspension of sentences filed on behalf of accused Khema @ Khem Singh and Gaurav has been allowed by this Court while making the following observations:

"Shri Charan and Shri Jain, learned Counsel representing the appellants urged that the entire case of the prosecution is false and fabricated. They drew the Court's attention to the statement of injured eye-witness PW-3 Madan Lal and his cross-examination wherein he was confronted with his investigational statement (Ex.D/3) in which there is a categoric mention that the deceased Jogendra had gone to the house of the accused Gaurav where the incident took place. They urged that while deposing in the Court, the prosecution witness conveniently

diverted from this fact and altered the genesis of the occurrence. They also referred to the statement of PW-7 Dr. Anil Jatav who carried out postmortem upon the body of the deceased Jogendra and also conducted medical examination of the injuries of PS-3 Madan Lal and urged that as per statement of the doctor, cause of death of deceased Jogendra was rupture of liver and spleen without there being any corresponding blunt weapon injuries on the external parts of the body. They further urged that even if the prosecution allegations are accepted to be true at the highest, the offence, if any, would not travel beyond Section 325 IPC. As per them, the accused have remained in custody for the last near four and half years and hearing of the appeals is likely to consume time. They thus, crave acceptance of the instant applications for suspension of sentences. Learned Public Prosecutor vehemently and fervently opposed the submissions advanced by the learned counsel representing the accused appellants. He too is not in a position to dispute the fact that the incident took place in front of the house of the accused Gaurav. Furthermore, he also admits that the medical officer PW-7 Dr. Anil Jatav has given a specific opinion that the injuries to the internal organs i.e., liver and spleen of the deceased were not having any corresponding marks of external injuries. In this background and considering the long period of incarceration suffered by the accused petitioners but without commenting on the merits of the case, we are inclined to accept these applications for suspension of sentences."

The sentence awarded to the co-accused Nitesh Singh @ Monu has also been suspended by the Co-ordinate Bench of this Court vide order dated 18.02.2019.

Learned counsel argues that the case of the present applicant is not more distinguishable than the case of the co-accused persons whose sentences have already been suspended by this Court. Thus, he deserves to be enlarged on bail during the pendency of the appeal.

Learned Public prosecutor vehemently and fervently opposes the application seeking suspension of sentence.

In this background and upon consideration of the arguments advanced on behalf of the appellant-applicant and having regard to the facts and circumstances of the case, this Court is of the opinion that it is a fit case for suspending the sentences awarded to the accused appellant.

Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentences passed by the learned Additional Sessions Judge, No.2, Chittorgarh vide judgment dated 20.08.2018 in Sessions Case No.21/2014 against the appellant-applicant Atul Thakre S/o Nandlal Thakre shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance in this court on 25.04.2019 and whenever ordered to do so till the disposal of the appeal on the conditions

indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address, they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case the said accused applicant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.