
(2010) 08 RAJ CK 0029

In the Rajasthan High Court

Case No : Criminal Suspension of Sentence Application No. 270 of 2010

Azadar and Another

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 304B, 489B, 498A

Citation : (2011) 5 RCR(Criminal) 644 : (2011) 2 RLW 1660

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Advocate : Ashvin Garg, for the Appellant; Tej Prakash Sharma, Spl. P.P., for the Respondent

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—Heard the learned counsel for the applicant as well as the learned Public Prosecutor. It is submitted by the

counsel for the accused applicant Smt. Azadi W/o Dilawar Ali that the instant case was initiated when she was travelling along with her son

Azadar. Further, he has submitted that the conviction awarded to the applicant is u/s 489B/120B and 498C/120B IPC and sentenced for 5 years

and 4 years R.I., respectively. It is also submitted that the accused appellant is an old lady of about 65 years of age. The learned counsel for the

applicant has submitted that the accused was arrested on 18.11.07 and as such she has already undergone actual period of custody for about two

years nine months, and if total period including remission etc. is to be accounted for, then it shall be much over three years. Therefore, he has

submitted that the accused applicant who is an old lady may be now enlarged on bail by suspending her sentence.

2. On the other hand, the learned Public Prosecutor has opposed the application for suspension of sentence and submitted that a serious offence

has been committed by the accused applicant along with one another, therefore, her sentence may not be suspended. It is also submitted that a

case, under the Customs Act is still pending before the concerning court. After referring to the evidence, the learned Public Prosecutor has

submitted that the learned trial Court has rightly passed the order of conviction even against the present accused appellant.

3. I have given my anxious and thoughtful consideration to the submissions made by the counsel for the rival parties and the facts and

circumstances of the case. In my opinion, the question which is to be considered presently by this Court in this application for suspension of

sentence is that the accused appellant is a lady of about 65 years of age. On having been arrested on 18.11.2007, she is nearing completion of a

period of three years of custody and the sentences awarded to her are four years and 5 years respectively, for two offences and they had been

ordered to run concurrently.

4. It is pertinent to mention here that recently the Hon''ble Supreme Court in the case of Ram Dayal & Anr. Vs. State of Raj., Cr. Appeal No.

628/2010 decided on 26.3.2010, has considered the aspect that the accused may serve the sentence before appeal is finally disposed of. The

relevant extract of the observations made by the Hon''ble Supreme Court is as under:-

This is an appeal for setting aside Order dated 17.7.2008 passed by the learned Single Judge of Rajasthan High Court, Jaipur Bench in Criminal

Misc. (SOS) Application No. 365/2008 in SB Cr. Appeal No. 24/2008 whereby he declined to suspend the sentence imposed upon the

appellants by the trial Court as a result of his conviction under Sections 304B and 498A of the Indian Penal Code.

On 15.3.2010, this Court directed Registrar, Rajasthan High Court (Jaipur Bench) to send information about the total pendency of Criminal

Appeals and the schedule of hearing.

In compliance of the aforementioned direction, Registrar (Administration), Rajasthan High Court, Jaipur Bench has sent letter No. PA (RA)

RHCB/2010/43 dated 22.3.2010 incorporating therein a statement showing total

pendency of the criminal appeals. He has also informed this

Court that one Division Bench is hearing old criminal appeals upto the year 1990 and the other Division Bench is hearing those criminal appeals in

which the accused are in jail for the last 7 years or more. Out of the two Single Benches, one is hearing old criminal appeals upto the year 1990

and the other is hearing appeals in which the accused are in Jail for four years or more.

From the statistics made available to this Court regarding total pendency of the criminal appeals and availability of the number of Judges for hearing

the same, it can reasonable be presumed that the High Court may not be able to hear the appeal of the appellants, which is of the year 2008 at an

early date and it is quite possible that they may serve out their sentence before the appeal is finally disposed of.

5. Consequently, the Hon''ble Apex Court while setting aside the impugned order dated 17.7.08 passed by the Single Bench of this Court in an

appeal, ordered that the sentence awarded to the appellant therein be suspended during pendency of the appeal.

6. In view of the above, as well as the fact that the accused is a lady of about 65 years of age; nearly 2/3 of sentence has already been served by

her and without expressing any opinion on merits of the case, I deem it just and proper to suspend the sentence awarded to her during pendency of

the appeal. Accordingly, the application for suspension of sentence is allowed and it is ordered that the sentence awarded to accused-applicant

Smt. Azadi W/o Shri Dilawar Ali, in Sessions Case No. 22/2008 shall remain suspended on furnishing a personal bond of Rs. 2 lacs and two

sureties bond of 1,00,000/- (Rs. One lac) each to the satisfaction of the learned trial Court to the effect that she shall appear before this Court on

13.9.2010, and as and when called upon to do so.