

(2018) 08 RAJ CK 0267

In the Rajasthan High Court

Case No : Criminal Misc. (Suspension Of Sentence) Application No.515, 514 of 2017, Criminal Appeal No. 793, 792 of 2017

Bhavesh Arvind Bhai Patel @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 30-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164

Citation : (2018) 08 RAJ CK 0267

Hon'ble Judges : Munishwar Nath Bhandari, J;Dinesh Chandra Somani, J

Bench : Division Bench

Advocate : Manoj Sharma, Abhishek Sharma, Jagdish Rana, Sanjeev Sogarwal, Ashwani Sharma

Final Decision : Allowed

Judgement

Heard on the applications for suspension of sentence.

Learned counsel for the applicants submit that the learned trial Court has drawn conclusions on probabilities to connect the applicants with the crime.

It is after going against the principles of criminal jurisprudence. It has been held that the prosecution need not to prove the case to the hilt or beyond

doubt, rather, the conviction can be made on the probabilities. The aforesaid finding has been given in para No.2157. The aforesaid itself is a ground to

hold conviction to be illegal.

It is further stated that against applicant-Bhavesh Arvind Bhai Patel, no evidence has come to connect him in the incident with the crime of bomb blast

at Dargah area at Ajmer other than to show i.e. Mobile No.9879104778 was switched off at 8.17 AM from 10.10.2007 till 12.10.2007 at 7.19 AM and

that he was absconding till his arrest from Khan Market/Lodi Marg. The trial Court earlier recorded finding at para No.2044 to the effect that

prosecution could not prove that accused absconded after knowing about his

implication in the crime. Thus, the second ground to connect the accused with the crime is also not made out. Keeping the mobile switched off for two days or to abscond cannot be such an evidence to connect the applicant with the incident of bomb blast.

So far as other accused-Devendra Gupta is concerned, again no evidence has come which can show his involvement beyond doubt. The case of

Devendra Gupta has been considered from para No.2137 onwards. He has been connected with the crime based on a SIM taken on the basis of a

forged driving license though not belonging to him. It was, rather, in the name of Babulal Yadav S/o Manohar Yadav. It has not been proved that

forgery was committed by the applicant. Thus, even his conviction is based on surmises and conjunctures. The prosecution was required to prove the

case beyond doubt but they failed to do so thus his sentence may also be suspended during pendency of the appeal, as hearing of the appeal will take

time.Â

Learned Special Public Prosecutor for NIA has opposed the application for suspension of sentence and submits that the conviction of the accused is

based on evidence. It is sufficient to connect them with the crime. The statements of accused-Bhavesh Arvind Bhai Patel was recorded under

Section 164 Cr.P.C. but it was discarded by the learned trial Court on technical grounds otherwise he has confessed his involvement in the crime. The

learned trial Court has thus, considered the other material to connect the applicants with the crime and finding evidence against them, passed the

order. Looking to the fact that out of the bomb blast three persons died and many other received injuries, the sentence of the applicants may not be suspended.

We have considered rival submissions of learned counsel for the parties.

We find that the learned trial Court has drawn conclusions for each accused and based on those conclusions, order of conviction was passed against

Bhavesh Arvind Bhai Patel and Devendra Gupta while acquitting seven other accused. The perusal of paras No.2152 to 2158, reveal that the

conviction of Bhavesh Arvind Bhai Patel has been made on probabilities. Bhavesh Arvind Bhai Patel said to have been absconded after the incident

and was arrested after 5 Â½ years but in para No.2044, the learned trial Court did not find it to be case of absconding after knowing the involvement

of applicant. The conviction is otherwise based on probabilities. Para No.2157 has been recorded by the trial Court going contrary to criminal

jurisprudence and for the ready reference, it is quoted hereunder :

â??pwWafd fof/k dh lqLFkkfir fLFkfr ds vuqlkj vfHk;kstu ls viuk ekeyk 'kr&izfrâ??
kr fufâ??prrk ds lkFk lkfcr fd;s tkus dh vis{kk ugha dh tk ldrh

gS] ,sls esa leLr ekuoh; IEHkkoukvksa (in all human probabilities)dks n`f""Vxr
j[krs gq, dsoy ,oa dsoy ;gh fu""d""kZ fudyrk gS fd vfHk;qDr Hkkosâ??k

iVsy Hkh ,sls vkijkf/kd ""kM;a= esa i{kdkj Fkk rFkk ml vkijkf/kd ""kM;a= ds
vxzlj.k esa ce Iyk.V djus ds fy;s njxkg 'kjhQ vtesj esa vk;k FkkAâ??

The conviction of Bhavesh Arvind Bhai Patel has been made on probabilities and in the same manner the discussions for involvement of other

accused Devendra Gupta has been made in paras No.2737 to 2151. The trial Court has recorded his involvement based on human probabilities, as

given in para No.2151. Devendra Gupta has been connected with the crime based on a license, taken based on forged document though it has not

been proved that the said license was taken by him.

Taking into consideration the aforesaid facts, we are inclined to accept the applications for suspension of sentence.

The applications for suspension of sentence are allowed and it is ordered that sentence awarded to accused-applicants namely;

(1) Bhavesh Arvind Bhai Patel S/o Shri Shri Arvind Bhai Patel and (2) Devendra Gupta @ Bobby @ Ramesh S/o Shri Satya Prakash Gupta in

Sessions Case No.02/2011 shall remain suspended during pendency of the appeal and they be released on bail provided each of them furnishes a

personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety each in the like amount to the satisfaction of the learned trial

Court with the stipulation that they shall appear before this Court on 29.09.2018 and whenever called upon to do so.