
(2020) 06 MP CK 0021

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2582 Of 2020

Chhote Kureshi And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 148, 307

Citation : (2020) 06 MP CK 0021

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Sampooran Tiwari, R.D. Singh

Judgement

Heard on I.A.No.8291/2019 which is first application for suspension of sentence and grant of bail to appellants-Chhote Kureshi & Syed Kureshi.

The appeal has been preferred by the appellants against judgment dated 25.02.2019 passed by learned 11th Upper Sessions Judge, Bhopal in Session Trial No.831/2013. Appellants stand convicted for offence punishable under Sections 148 & 307 of IPC and has been sentenced to undergo RI for 2 years with fine of Rs.500/-and RI for 7 years with a fine of Rs. 1,000/-respectively to each with default stipulation in each.

Brief facts of the case are that on 29.07.2013, at about 5 P.M. in the evening, when complainant Anwar was going to bring vegetables and when he reached near Pipal tree, appellants alongwith other co-accused came there and assaulted him with knife on previous enmity due to which he sustained injuries on his body. Then, complainant cried and some persons came there to rescue him. Appellants ran away from the spot by giving threatening of dire consequences. Then appellants reached to one fruit stall where Haider was standing and assaulted him by means of knife due to which he sustained injuries on his body and abused him also. Then, some people from neighborhood came there to rescue him. After that, all the appellants ran away from the spot. Thereafter, a report has been

lodged against the present appellants and other co-accused persons.

Learned counsel for the appellants submits that the appellants have been falsely implicated in this case. They are in jail since 25.02.2019. During trial, appellant No.1 remained in jail from 05.08.2013 to 18.11.2013 and appellant No.2 remained in jail from 03.08.2013 to 15.11.2013. He further that no case is made out under Section 307 of IPC against the appellants-accused. Dr. Vaibhav Maheshwari (PW-10) examined injured Haider and found fracture proximal phalanx in his left hand. Dr. Ajay Shankar Mehta (PW-15) examined Anwar Hussain and found 6 incised wound. No fracture is found on his body. There are material contradiction, omission and improvements in the statements of the witnesses. He further submits that there are fair chances to succeed in the case. This appeal is of year 2019 and appeal will take time to conclude due to COVID-19. There is no probability of his absconding and tampering with the prosecution evidence. If the appellant is not released on bail, the purpose of filing this appeal will be futile. With the aforesaid submissions, learned counsel for the appellant prays for allowing this application and grant bail to him.

On the other hand, learned counsel for the respondent-State opposes the prayer and submits that the learned trial Court has rightly convicted the appellants. Therefore, he prays for dismissal of this application.

Having considered the arguments advanced by learned counsel for the parties and on perusal of the record, it is found that appellants are in jail since 25.02.2019 and appellants Nos. 1 & 2 remained in jail during trial from 05.08.2013 to 18.11.2013 and 03.08.2013 to 15.11.2013 respectively, this appeal is of year 2019, final hearing of this appeal will take time but without commenting anything on the merit of the case, the I.A. No.8291/2019 is allowed. It is ordered that subject to payment of fine amount, if not already deposited, the execution of jail sentence of appellants-Chhote Kureshi & Syed Kureshi shall remain suspended during the pendency of this appeal and they be released on bail on his furnishing a personal bond for a sum of Rs.50,000/-(Rupees Fifty Thousand Only) each with one solvent surety each in the amount of Rs. 50,000 each to the satisfaction of the trial Court for their appearance before the trial court on 06.08.2020 and thereafter on all other such subsequent dates, as may be fixed by the trial court in this regard.

In SINHA view of the outbreak of 'Corona Virus disease (COVID-19)' the appellants shall also comply with the rules and norms of social distancing. Further, in view of the order passed by the Hon'ble Supreme Court in suo moto W.P.No.1/2020, it would be appropriate to issue the following direction to the jail authority :-

1. The Jail Authority shall ensure the medical examination of the appellants by the jail doctor before their release.

- 2 . The appellants shall not be released if they are suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3 . If it is found that the appellants are suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing them in appropriate quarantine facility.

List this matter for final hearing in due course. C.C. as per rules.