
(2018) 12 RAJ CK 0197

In the Rajasthan High Court

Case No : Suspension Of Sentence(Appeal) No. 1397, 1251 Of 2018

Kailashdan @ K.D. Charan

APPELLANT

Vs

State Of Rajastha

RESPONDENT

Date of Decision : 17-12-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 389

Citation : (2018) 12 RAJ CK 0197

Hon'ble Judges : Sandeep Mehta, J;P.K. Lohra, J

Bench : Division Bench

Advocate : R.K. Charan, J.P.S. Choudhary, J.S. Choudhary, Pradeep Choudhary

Final Decision : Disposed Off

Judgement

Heard. Perused the material available on record.

Learned Counsel Shri R.K. Charan representing the appellants urges that there is no evidence worth the name so as to infer that the appellants herein were acting as an unlawful assembly in furtherance of a common object with the accused persons including Anandpal Singh who were travelling in a separate vehicle and fired gunshots at the complainant party causing the death of Rakesh Kumar. He urges that no live link could be provided by the prosecution so as to establish the complicity of the appellants in the alleged crime. He further submits that in view of the admitted facts that the accused having the fire-arms were travelling in a different vehicle from that of the accused appellants, it cannot be inferred by any stretch of imagination that the occupants of two vehicles were jointly proceeding to the place of occurrence in furtherance of a prior conspiracy or in furtherance of any common intention to kill or assault the members of the complainant party and that their sequential arrival at the spot was by sheer coincidence. He further submits that the appellants were on bail during the course of trial and there is no allegation of the prosecution that they misused the liberty so granted to them by this Court. On these grounds, he craves acceptance of these applications for suspension of sentences.

Per contra, learned Public Prosecutor and learned Senior Counsel Shri J.S. Choudhary, assisted by Shri Pradeep Choudhary vehemently and fervently opposed the submissions advanced by Counsel for the appellant. They urged that the vehicle in which the appellants were travelling, was following the vehicle in which Anandpal Singh and the co-assailants were present. The appellants were very well aware that Anandpal Singh and his companions were carrying fire-arms and thus the accused petitioners were proceeding to the scene of the occurrence in furtherance of prior conspiracy and after having formed an unlawful assembly clothed with the common object to launch an attack & murder and therefore, they do not deserve indulgence of bail.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record.

The highest allegation of the prosecution is unfolded in the statement of PW-7 Ramniwas who alleged that initially Anandpal Singh, Ram Singh, Manjeet Singh, Vicky Singh and Balveer Banura arrived at the scene of occurrence in vehicle No. RJ 27 8553. A little later they were followed by another vehicle in which the appellants were sitting. The witness alleged that the accused Anandpal Singh and another accused alighted from the vehicle & started firing gunshots towards the liquor shop in which the complainant and his companions were hiding and that the appellants after arriving at the spot exhorted that they should be killed. However, this allegation of exhortation is an obvious improvement as would be evident from reading the investigational statement of PW-7 Ramniwas. Thus, it is the firm opinion of the Court that the appellants have strong case to assail the impugned judgment on the ground that they were not a part of the unlawful assembly or that the object of the occupants of the two vehicles was common in nature i.e., to assault the complainant party. The possibility of accused having arrived at the spot by coincidence cannot be ruled out. The appellants were on bail during trial. They did not misuse the liberty granted to them by this court. Hearing of the appeal is likely to consume time. In this background, we are inclined to accept these application of suspension of sentences. However, we may hasten to add here that any observation made in this order, would not prejudice the case of either of the parties when the appeal is being finally decided.

Accordingly, the instant applications for suspension of sentences filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentences passed by the learned Addl. Sessions Judge, Sujangarh, District Churu vide judgment dated 07.06.2018 in Sessions Case No.24/2011 against the appellants-applicants Kailash Dan @ K.D.Charan S/o Shri Sawai Dan, Mahavir Singh S/o Jeevraj Singh Rajput & Chotu Singh S/o Shri Narayan Singh shall remain suspended till final disposal of the aforesaid appeal and they shall be released on bail, provided they execute personal bond in the sum of Rs.1,00,000/- each with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for their appearance in this court on 15.01.2019 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he/she/they will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant(s) changes the place of residence, he/she/they will give in writing his/her/their changed address to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address(s), 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(s) in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant(s) was/were 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(s) does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.