

(2018) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Suspension Of Sentence(Appeal) No. 706 of 2018

Mahesh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 06-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 389

Citation : (2018) 08 RAJ CK 0024

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : R.S. Gill, Deepak Choudhary

Final Decision : Allowed

Judgement

Heard learned counsel for the appellant and learned Public Prosecutor on the third application for suspension of sentence.

This third application for suspension of sentence has been moved on behalf of appellant Mahesh who is in custody since 05.05.2011.

Learned counsel Shri Gill urges that the period of more than seven years has lapsed since the appellant was arrested. Shri Gill drew the Court's

attention to the statement of Seizure Officer PW16 Praveen Tak and points out that when witness produced the Mudda Mal in the court (which was

marked as Article-3), no visible marks of identification were noticeable on the packet so as to link the exhibited contraband with the recovery made in

the case in hand. He thus, urges that the appellant has strong case for assailing his conviction and sentence awarded to him deserves to be suspended

because there is no likely of the appeal being heard in the near future.

Shri Deepak Choudhary, PP representing the State vehemently opposed the submissions advanced by the appellant's counsel. However, he too is

not in a position to dispute the fact that the appellant is in custody for last more

than seven years.

This Court, while rejecting previous application for suspension of sentence filed on behalf of the appellant had observed that the appeal may be heard

expeditiously but till date, it appears that hearing of the appeal is not possible in near future.

In this backdrop and considering the protracted period of custody undergone by the appellant and the apparently strong grounds available to the

appellant for challenging his conviction, this Court is of the opinion that sentences awarded to the appellant deserve to be suspended.

Accordingly, the instant third 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 Special Judge NDPS Cases, Pratapgarh vide judgment dated 10.03.2017 in Sessions Case No.09/2012 against the appellant-

applicant Mahesh S/o Shri Nanalal 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.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for his

appearance in this court on 06.09.2018 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.