

(2020) 09 MP CK 0168

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 5504 Of 2018

Om Prakash Verma

APPELLANT

Vs

State Of Madhya Pradesh Through Economic Offence Wing

RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389(1)
Indian Penal Code, 1860 — Section 120B, 420, 645, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2020) 09 MP CK 0168

Hon'ble Judges : S. K. Awasthi, J

Bench : Single Bench

Advocate : Anand Mohan Mathur, Abhinav P. Dhanodkar, Prakhar Karpe

Final Decision : Dismissed

Judgement

None appears for the state of Madhya Pradesh / Economic Offence Wing / Bhopal.

Heard on IA No.6144/2020, repeat (seventh) application under Section 389 (1) of the Code of Criminal Procedure, 1973 for suspension of jail sentence and grant of bail filed on behalf of the appellant.

The appellant has been convicted and sentenced by Special Judge (under PC Act) Ujjain, District Ujjain (MP) in Special Sessions Case No.25/2013 vide judgment dated 17th July, 2018, as under: -

Conviction

Sentence

Section

Act

RI

Fine amount

Imprisonment in lieu of fine

420 r/w 120-B

IPC, 1860

4 years

Rs.3,000/-

8 months RI

465 r/w 120-B

IPC, 1860

2 years

Rs.1,000/-

2 months RI

467 r/w 120-B

IPC, 1860

5 years

Rs.3,000/-

8 months RI

468 r/w 120-B

IPC, 1860

5 years

Rs.3,000/-

8 months RI

471 r/w 120-B

IPC, 1860

5 years

Rs.3,000/-

8 months RI

13 (1) (d) r/w 13(2) r/w 120-B

Prevention of Corruption Act 1988 r/w IPC, 1860

5 years

Rs.3,000/-

8 months RI

Presently, the sentence of the appellant has been suspended temporarily for a period of two months vide order dated 07.08.2020 and he is on bail.

Learned Senior Counsel for the appellant has submitted that the appellant is in custody since 2018 and he has already undergone one year and eleven months sentence, which is more than 1/3rd of the total sentence of five years.

It is further submitted that the appellant is seriously ill and was also found positive during the test result of COVID 19 and has remained in quarantine and the appellant is suffering from heart ailment which requires immediate treatment, otherwise the health of the applicant would be seriously prejudiced. He also submitted that the final disposal of the appeal would take sufficiently long time.

It is also submitted that in this situation of pandemic COVID-19, appellant being heart / diabetes patient deserves bail / suspension of sentence on humanitarian grounds and considering Right to Life and other constitutional rights considering the order dated 23.03.2020 passed by Hon'ble Supreme Court in case of IN RE: CONTAGION OF COVID 19 Versus IN PRISONS Suo Moto Writ Petition No.1/2020: -

Quote

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

Unquote

Learned Senior Counsel for the appellant has also referred to order dated 16.09.2019 passed by Hon'ble Apex Court in matter of Vedprakash Pandya v. The State of M.P. in SLP_(Crl) 6560-6561/2019 (Annexure A/3) in which a similarly situated accused who had been awarded punishment of four years and who had completed one year and four months jail sentence, has been given the benefit of suspension of sentence. He has also referred to an order dated 13.08.2020 (Annexure A/4) passed by a Coordinate Bench of this Court at Indore Bench in Criminal Appeal No.3869/2019 in which also benefit of suspension of jail

sentence has been given to the accused.

Under these circumstances, learned Senior Counsel for the appellant prays for suspension of jail sentence of the appellant and grant of bail to him.

Learned Panel Lawyer for the respondent / State of Madhya Pradesh opposes the application by submitting that no sufficient ground is made out for releasing the appellant on bail; hence the application filed by the appellant be dismissed.

From perusal of the record, it appears that earlier repeat (fourth) application (IA No.7211/2019) of the appellant for suspension of jail sentence and grant of bail was dismissed by this Court on merits vide order dated 11.09.2019, granting liberty the appellant to renew his prayer after completion of half of the jail sentence, if the appeal is not decided during this period.

However, the aforesaid period i.e. half of the jail sentence out of total five years is not over. Therefore, the prayer made on behalf of the appellant for suspension of jail sentence is not acceptable.

Accordingly, IA No.6143/2020 has no merits and is hereby dismissed.

List the matter for final hearing in due course.