
(2022) 05 DEL CK 0312
In the Delhi High Court
Case No : Criminal Appeal No. 18 Of 2021

Shiva	Vs	APPELLANT
State Nct Of Delhi		RESPONDENT

Date of Decision : 20-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 398

Citation : (2022) 05 DEL CK 0312

Hon'ble Judges : Talwant Singh, J

Bench : Single Bench

Advocate : Abhay Singh, Izhar Ahmad

Judgement

Talwant Singh, J

CRL.M. (BAIL) 1516/2021

1. This is a second application for suspension of sentence.
2. The present appellant/applicant was convicted under Section 398 IPC and was awarded RI for 7 years with a fine of Rs. 5,000/- and in default, SI for 6 months. The appeal against this conviction stands admitted vide order dated 15.01.2021.
3. The first application for the grant of suspension of sentence was dismissed on 02.02.2021. Now, the present application has been moved for suspension of sentence by the appellant/applicant.
4. Notice was issued. The nominal roll has been called. The nominal roll shows that as on 03.02.2022, the unexpired portion of sentence was 3 years, 5 months and 4 days. By now, a period of about 2 ½ months is also to be added to this period, so, unexpired portion of sentence is about 3 years and 3 months (approximately).
5. I have heard learned counsel for the parties and learned APP for State.
6. Learned counsel for the appellant/applicant has relied upon the following

judgements:

(i) *Angana & Anr Vs State of Rajasthan* (2009) 3 SCC 767 wherein Hon'ble Supreme Court, while deciding the application for suspension of sentence has taken into consideration the fact that during the trial the Applicants were on bail and they did not indulge themselves in any other offence and neither it was the case of the other side that they have jumped the bail. The Hon'ble Supreme Court further taking into consideration the conduct of the Appellants during the trial allowed the suspension of sentence. It has been submitted that in the present case, during the trial, the Applicant/Appellant Shiva was on bail and even in the status report filed by the Respondent, it is not the case of the Respondent that the Appellant has jumped the bail, neither it is the case of the Respondent that Appellant was indulged in any other offence.

(ii) In *Dinesh Kumar Sinha Vs State of Jharkhand Thr CBI* (2009) 6 SCC 628 the Hon'ble Supreme Court has suspended the sentence on the basis that no possibility of hearing of the appeal in the High Court and the Appellant has already undergone half of the sentence as awarded by Ld. Trial Court. In the Present Case, as per the nominal roll, the Appellant has already undergone half of the sentence. Therefore, the Appellant may be granted the relief as prayed for.

(iii) In *Gavade Kisan Babu Vs Union of India & Ors W.P. (Crl) 2995/2019 & Crl.M.A. No. 41209-10/2019*, this Hon'ble Court while considering the application for suspension of sentence allowed the application for suspension of sentence on the basis that Appellant/Applicant is not a previous convict and while he was on parole on previous occasions he has not committed any other offence and this Hon'ble Court further considered the sentence undergone. In the present case, Appellant/Applicant is not a previous convict. While he was released on interim suspension of sentence vide order dated 04.06.2021, there is no complaint on record to show that during this period, the Appellant/Applicant has committed any offence. The Appellant has also undergone more than half of the sentence.

7. Keeping in view the fact that during trial, the appellant/applicant was on bail and he has neither jumped the bail, nor he has indulged in any other offence; the appellant/applicant has already undergone half of the sentence and the appellant/applicant is not a previous convict and there is no possibility of hearing the main appeal in the near future. Keeping in view the heavy pendency of the cases in the Delhi High Court, I am inclined to grant suspension of sentence to the present appellant/applicant during the pendency of the appeal. He be admitted to bail on execution of personal bond of Rs. 25,000/- with one surety of the like amount, subject to the following conditions:

(i) He shall appear before this Court as and when the appeal is listed.

(ii) He shall inform the IO his current address within one week from the date of his release and in case of any change, he shall keep the IO updated about his current address within two weeks from the date of the said change.

(iii) He shall provide his Mobile No. to the IO and he shall keep the location on at all times.

(iv) He shall not leave the country without the permission of this Court.

8. The application is accordingly disposed of.