

(2013) 10 RAJ CK 0063

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail (Suspension of Sentence) Appli-865/13 in Criminal Appeal No. 1019 of 2012

Smt. Rani @ Noorjahan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 RAJ CK 0063

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : S.K. Gupta and Mohd. Aslam Khan, for the Appellant; Alka Bhatnagar, Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

1. Both the applications seeking suspension of sentence filed by the accused applicants since arises from common judgment dt. 22.11.2012 convicting them for offence u/S. 302 read with Sec. 120-B IPC, hence heard together & are being decided by the present order. Both the accused applicants along with accused Mohd. Altaf were charge-sheeted for offence u/S. 302 & 120-B IPC, however, as regards Mohd. Altaf, he was convicted for offence u/S. 302 IPC and as regards present accused applicants, they have been convicted for offence u/S. 302 read with Sec. 120-B IPC.

2. Counsel for accused applicants submits that the deceased Rukiya was wife of the accused Mohd. Altaf and the prosecution case before the trial court was that the accused Mohd. Altaf had illicit relations with both the present two accused applicants and accused Mohd. Altaf gave poison to the deceased and three small children which was established from the FSL report Ex. P41 but as regards the present accused applicants, the sole evidence against them came from the prosecution was that there was call details between the present accused applicants & the accused Mohd. Altaf but neither there was details nor any evidence came on record that the present accused applicants had illicit relations

with the accused Mohd. Altaf and neither father PW1 nor mother PW10 & two other prosecution witnesses PW2 & PW3 have uttered/deposed in their statements regarding present accused applicants and the only statement made by each of them which came on record was that the accused Mohd. Altaf had illicit relations with some women and that was the cause for which alleged incident took place. He further submits that even the learned trial Judge in the impugned judgment dt. 22.11.2012 has also recorded a finding that call details which are obtained & exhibited by the prosecution are not admissible in evidence but still inference has been drawn that accused applicants were unable to justify their relations with the accused Mohd. Altaf and have been convicted with the aid of Sec. 120-B IPC.

3. He further submits that there is no evidence which came on record from the prosecution which could in any manner connect the present accused applicants with the alleged commission of crime and both of them are above 45 years of age and having their own children & grand children as well and even the finding which has been recorded by the learned trial Judge in the impugned judgment connecting them with the aid of Sec. 120-B IPC is also not legally sustainable. However, further submits that both are incarceration since 03.01.2010 and under these facts & circumstances, at least they are entitled to seek indulgence of this Court for suspension of sentence more so when the appeals are coming up for hearing in which the accused are incarceration & languishing in custody for about ten years and for all practical purposes hearing of their appeal may take its own time and as regards accused Mohd. Altaf, his application for suspension of sentence has already been dismissed by this Court on 31.05.2013.

4. Learned Public Prosecutor while opposing the applications submits that sufficient evidence was available on record to connect the present accused applicants with the alleged commission of crime and they have been rightly convicted with the aid of Sec. 120-B IPC.

5. Taking note of the submissions and also the material on record but without expressing any opinion on merits, this Court considers it appropriate to grant indulgence of suspension of sentence to the accused applicants as prayed for during pendency. Consequently, both the applications are allowed and it is ordered that the sentence awarded to the accused applicants by the learned trial court vide judgment dt. 22.11.2012 during pendency of appeal shall remain suspended and they shall be released on bail provided each of them furnishes a personal bond in the sum of Rs. 50,000/- with two sureties each in the sum of Rs. 25,000/- to the satisfaction of the learned trial court to the effect that they shall appear before this Court on 25.11.2013 and as and when called upon to do so.