

(2020) 08 RAJ CK 0131

In the Rajasthan High Court

Case No : Criminal Miscellaneous Suspension Of Sentence Application (Appeal)
No. 601 Of 2020

Suresh Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 319, 389
Indian Penal Code, 1860 — Section 302, 307, 325, 326, 449

Citation : (2020) 08 RAJ CK 0131

Hon'ble Judges : Sandeep Mehta, J; Kumari Prabha Sharma, J

Bench : Division Bench

Advocate : Vineet Jain, Anil Joshi

Final Decision : Allowed

Judgement

The instant application for suspension of sentence under Section 389 Cr.P.C. has been preferred on behalf of the appellant-applicant Suresh Kumar S/o Bhoop Ram seeking suspension of sentences recorded vide judgment dated 05.11.2019 passed by the learned Addl. Sessions Judge No.1, Hanumangarh in Sessions Case No.1/2016 whereby the appellant was convicted and sentenced as below:-

For offence under Section 449 10 years' R.I. & fine of I.P.C. Rs.10,000/-, in default of payment of fine, 6 months' S.I.

For offence under Section 302 Life Imprisonment & fine of I.P.C. Rs.40,000/-, in default of payment of fine, 1 year's S.I.

For offence under Section 307 10 years' R.I. & fine of I.P.C. Rs.30,000/-, in default of payment of fine, 1 year's S.I.

For offence under Section 326 10 years' R.I. & fine of I.P.C. Rs.20,000/-, in default of payment of fine, 8 months' S.I.

For offence under Section 325 5 years' R.I. & fine of I.P.C. Rs.10,000/-, in default

of payment of fine, 6 months' S.I.

The sentences recorded for offences under Sections 302 and 307 IPC were ordered to run concurrently whereas, the sentences recorded for offences under Sections 449, 307, 326 & 325 IPC were ordered to run concurrently.

The learned Public Prosecutor has chosen not to file reply to the application for suspension of sentence and proposes to argue the matter orally.

Heard and considered the submissions advanced by learned counsel for the applicant-appellant as well as learned Public Prosecutor and have gone through the impugned judgment as well as the entire record.

The entire facts of the case were considered in detail by this Court while deciding the D.B. Criminal Misc. Bail (Suspension of sentence) No.169/2020 preferred on behalf of the co-accused Mukesh vide order dated 17.02.2020. The relevant extracts of the said order have a bearing on the present application and are reproduced hereinbelow for ready reference:-

"Learned counsel Shri Jain urges that the incident took place on 14.4.2015. The F.I.R. was lodged by Devi Lal on the very same day in which five persons viz. Surjit, Vedprakash, Rajendra, Dilip and Sahab Ram were named to be the assailants and there was a specific allegation in the F.I.R. that Rajendra inflicted the Gandasi blow on the head of the deceased Subhash. It was also alleged in the F.I.R. that these assailants had been convicted on the basis of evidence of Subhash and that the assault was perpetrated by way of vengeance. Shri Jain submits that the case took a turn after more than three months of the incident when the Investigating Officer claims to have recorded the statement of the injured child witness Poonam daughter of Subhash (3 of 5) [SOSA-601/2020] wherein, the accused appellants were implicated as the two assailants. Shri Jain urges that as a matter of fact, after the F.I.R. had been lodged, bargain was stuck against the named accused and the complainant. The accused appellants are the close relatives of the deceased Subhash and had no motive to murder him. They opposed this compromise and thus, the complainant and the accused conspired together to shift the blame and frame the appellant in this case. He urges that the Investigating Officer claims to have recorded the statement of the child witness Poonam on 19.8.2015 whereas, the opinion expressed by the Medical Board on the application of the Police (Ex.D4) dated 24.8.2015 indicates that the girl was not in a position even on that day to give a composed statement and could only communicate with gestures. Shri Jain submits that even while deposing in the court, the child who was examined as P.W.1 admitted in her cross-examination that she could started performing her daily ablutions in the month of January 2016 and before that, she was depending for these mundane jobs totally on her family members viz. mother etc. She even had to make gestures to request for food, water etc. during this period. Shri Jain submits that surprisingly, even the wife of the deceased Subhash, even though her presence at the scene of occurrence was imperative, was not examined in evidence.

Likewise, Prithviraj (brother of the deceased) who was named as an eye-witness in the F.I.R. was also not examined in the prosecution evidence without any reason being shown. The Police filed a negative Final Report qua the appellant Mukesh and the Court summoned him to face trial by exercising powers under Section 319 Cr.P.C. As per him, the appellant had no motive to kill the deceased Subhash and manifestly, he has been framed in the case to save the true assailants who were named in the F.I.R. He thus urges that the appellant has strong grounds for assailing the impugned judgment. Hearing of the appeal is likely to consume time. On these grounds, Shri Jain implored the Court to accept the application for suspension of sentences filed on behalf of the appellant Mukesh.

Per contra, learned Additional Advocate General and learned Public Prosecutor vehemently and fervently opposed the submissions advanced by Shri Jain.

Nonetheless they too are not in a position to dispute the fact that the assailants named by Devi Lal in the F.I.R. were not charge-sheeted by the investigating agency. The accused appellant Mukesh was also not charge-sheeted after investigation and he was summoned as an additional accused by taking recourse to the power under Section 319 Cr.P.C. There are manifest loopholes in the prosecution case regarding the recording of the statement of the child witness Poonam P.W.1 during investigation because the very fact regarding her being in a fit position to give such statements (Ex.P1 dated 19.8.2015) under Section 161 Cr.P.C. and (Ex.P1 dated 1.9.2015) under Section 164 Cr.P.C. is under a grave cloud of doubt if the Medical Board's opinion (Ex.P4A) is considered. The Investigating Officer filed the application to seek opinion regarding the girl being in a fit state to give the statement on 24.8.2015. The Board expressed its reservations regarding her fitness to give the statement. Therefore, it is apparent that the reliability of the evidence of the star prosecution witness P.W.1 is seriously questionable. The appellant thus has strong grounds to challenge the impugned judgment. Hearing of the appeal is likely to consume time. Consequently, this Court is of the opinion that it is a fit case for suspending the sentences awarded to the accused appellant."

In the said order, this Court has expressed its reservations on the entire prosecution case including the evidence of star prosecution witness PW-1 Poonam. Manifestly, on merits, the case of the appellant is hardly distinguishable from that of the co-accused Mukesh. Thus, he too deserves indulgence of bail on parity.

Accordingly, the application for suspension of sentences filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentences passed by the learned Additional Sessions Judge No.1, Hanumangarh vide judgment dated 5.11.2019 in Sessions Case No.1/2016 against the appellant-applicant Suresh Kumar S/o Bhoop Ram 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.80,000/- with two sureties of Rs.40,000/- each to the satisfaction of the

learned trial Judge for his appearance in this court on 7.9.2020 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.