

SB CR.MISC.3rd BAIL APPL.FOR SUSPENSION OF SENTENCE
NO.1615/2005.

IN

SB CR.APPEAL NO.612/2002.

Dinesh

Vs.

State

Date of Order :-

25/11/2005.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. V.P. Bishnoi, for the applicant-appellant.
Mr. Jainendra Jain PP for the State.

This application for suspension of sentence u/S.389 Cr.P.C. has been filed on behalf of applicant-appellant Dinesh who has been convicted by the learned Additional Sessions Judge (Fast Track) Alwar in Sessions Case No.24/2001 (38/2000) for offences under Sections 304B and 498A IPC. The maximum sentence awarded is 10 years R.I. and fine with default stipulation.

It is contended by the learned counsel for the applicant-appellant which has not been controverted by the learned Public Prosecutor that the applicant-appellant being in custody since 24/2/2000 has already undergone more than half of the sentence imposed upon him and his appeal has not been heard and decided so far.

He has referred to the cases of **Shailendra Kumar Vs. State of Delhi : (JT 2000 (1) SC 184)**, **Bhagwan Rama Shinde Gosal & Ors. Vs. State of Gujarat : (1990 Cr.L.R. (SC) 345)**, **Smt.Akhtari Bi Vs. State of M.P. : (JT 2001(4) SC 40** and the order of

this Court **dated 21/11/2005 in SB Cr.Misc.IInd Bail Application for Suspension of Sentence No.1103/05 in Criminal Appeal No.259/04 (Kajodi and anr. Vs. State).**

He has on the strength of these authorities contended that the applicant-appellant is also entitled to suspension of sentence.

Learned P.P. could neither rebut this contention nor could cite any authority taking a contrary view.

In *Shailendra Kumar Vs. State of Delhi (supra)*, the applicant-appellant was sentenced to 7 years' R.I. for offence u/S.304B and 2 years' R.I. for offence u/S.498A IPC and his appeal could not be decided even though he had served the sentence for more than 3 years and there being no likelihood of the appeal being heard early, it was held that he was entitled to bail/suspension of sentence.

In *Bhagwan Rama Shinde Gosal & Ors. Vs. State of Gujarat (supra)*, the applicants-appellants were convicted by the trial court for offence under Section 392 read with S.397 IPC and each of them was sentenced to R.I. for 10 years. They moved the High Court of Gujarat for suspension of sentence which was disallowed. At a later stage, they again moved for suspension of sentence which too was dismissed. The High Court declined to direct the expeditious hearing of the appeal on the premise that there were older appeals already on the board.

Their lordships of the Hon'ble Apex Court has observed that if a convict person is sentenced to the fixed period of sentence and files appeal under any statutory right, his application for suspension of sentence can be considered liberally unless there are

exceptional circumstances. Ofcourse, if there is any statutory restriction against the suspension of sentence, it would be a different matter and when the sentence is of Life Imprisonment, the consideration for suspension of sentence could be of a different approach. If, for any reason, the sentence of limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits; otherwise, a very valuable right of appeal would be an exercise in futility by afflux of time. In the aforesaid case, the Hon'ble Apex Court directed suspension of sentence of the appellants on conditions.

In *Smt.Akhtari Bi Vs. State of M.P. (supra)*, it has been laid down by the Hon'ble Apex Court that speedy justice is a fundamental right flowing from Article 21 of the Constitution and appeal being a statutory right, the verdict of the trial court does not attain finality during the pendency of the appeal and the criminal appeals particularly such appeals where the accused are in jail should be disposed of within the specified period not exceeding 5 years in any case and in case an appeal in which the accused is in jail is not disposed of within the specified period for no fault of the convict, such convict may be released on bail on such conditions as may be deemed fit and proper by the court. It is however, made clear that in computing the period of 5 years the delay for any period which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. In the aforesaid case, their lordships directed suspension of sentence of the

appellant in view of the peculiar facts and circumstances of the case.

This Court vide its order dated 21/11/2005 directed suspension of sentence of the applicants-appellants as their appeal could not be heard and disposed of within the stipulated period of 6 months as mentioned in the order dated 28/2/2005 of the Hon'ble Apex Court.

Thus, considering the submissions made at the bar and the law laid down in the aforesaid authorities as also the fact that the applicant-appellant has already undergone more than half of the sentence and there is no immediate prospect of his appeal being heard and decided in near future, I find it appropriate, just and reasonable to suspend his sentence till the disposal of his appeal.

In the result, this application for suspension of sentence u/S.389 Cr.P.C. is allowed and it is directed that the sentence awarded to applicant-appellant Dinesh S/o Prem Kumar shall remain suspended during the pendency of his criminal appeal provided, he furnishes a personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the trial Court for his appearance before this Court on 21/12/2005 and on all dates of hearing unless otherwise directed.

Sd/-
(HARBANS LAL), J.

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