

ORDER SHEET
**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.S-132 of 2024.

<i>DATE</i>	<i>ORDER WITH SIGNATURE OF JUDGE</i>
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29.05.2025.

M/s Aijaz Ahmed Shaikh & Kamran Baig, Advocates for
appellant (Waqar Ahmed).

Syed Shahzad Ali Shah, Advocate for appellant (Farhan
Gul).

Mr. Ghulamullah Chang, Advocate for complainant.

Mr. Shahid Ahmed Shaikh, Addl. P.G for the State.

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The learned counsels for appellants state that appeal of the appellants remain pending, but they wants to press the pending Bail Applications in Cr. Appeal U/s 426 Cr.P.C on the ground that no case for conviction is made out by the prosecution in the above mentioned appeal. No incriminating evidence has come out during the trial against both the appellant/accused. It is highly unlikely that the convictions shall be upheld once the appeal is heard and decided. Both the counsel for the appellants placed their reliance upon case laws. For ready reference, the case laws are mentioned below separately.

2017 PCr.LJ 727 Muhammad Abbas and others v. The State and others.

“Criminal Procedure Code (V of 1898)---

----S. 426---Penal Code (XLV of 1860), Ss. 396 & 149---Dacoity with murder, common object---Suspension of sentence, petition for---FIR was registered against unknown accused and the petitioners were arrested on secret information, being suspects and were involved in that case having been identified by the witnesses during identification parade---No specific role had been assigned to the petitioners in proceedings of identification parade---No looted property was recovered from the petitioners---Deeper appreciation of evidence, though was not permissible at such stage, but the same was permissible to the extent of slightly touching merits of the case, without giving conclusive findings---Question qua the role of petitioners, and non-recovery of looted amount from the petitioner, needed

reappraisal of evidence at the time of hearing appeal---Co-appellant had been sentenced to death by the Trial Court; there was no likelihood of appeal being heard in near future---No evidence was on record including that petitioners were, previously convicted, hardened-desperate or dangerous criminals; or were accused of an act of terrorism punishable with death or imprisonment for life---Sentence awarded to the petitioners, was suspended, and petitioners were directed to be released on bail, in circumstances."

2008 SCMR 1381 Abdul Rehman v. The State and another.

"---S. 426---Suspension of sentence and grant of bail by High Court---Validity---Bail was granted by High Court mainly on the grounds that the Trial Court had observed in its judgment that prosecution witnesses were not present at the scene of occurrence and had not witnessed the same; that all the investigations had opined that the complainant and prosecution witnesses were not present at the scene of occurrence nor the occurrence had taken place in the manner asserted by the prosecution---Conclusion arrived at by the Trial Court that witnesses were not present at the time of occurrence was based on reasons and was not based merely on the opinion of the police---Trial Court had also recorded that empties recovered from the spot did not tally with the weapon recovered at the instance of the accused---Merits of the case could be looked into at the time of hearing of application for suspension of sentence---".

2012 PCr.LJ 1760 Altaf Ahmed v. The State and another.

"---S. 426---Penal Code (XLV of 1860), Ss. 302(b), 324 & 337-F(v)---Qatl-e-amd, attempt to commit qatl-e-amd, ghayr-jaifah-hashimah---Suspension of death sentence during pendency of appeal---Scope---Trial Court convicting the accused after confusing him with a co accused---Effect---Accused was convicted under Ss.302(b), 324 and 337-F(v), P.P.C., and sentenced to death by the Trial Court---Contentions of the accused were that he was not alleged any active role in the occurrence and was shown as an abettor to the main culprits and that the Trial Court had confused the accused with a co-accused, who was assigned a specific role in the main occurrence---Validity---From the beginning the accused was assigned the role of an abettor/instigator and same role was assigned to him during the statements of the witnesses---Accused was convicted for causing death of the deceased and for injuring one of the witnesses, despite the fact that he was never alleged to have caused the death of the said deceased or causing injury to the said injured---Where by mere reading of evidence at a glance, court came to the conclusion that evidence available on record was not sufficient to sustain the conviction or illegality was floating on the surface, then while exercising power under S.426, Cr.P.C. the death sentence passed against a convict during the pendency of an appeal could be suspended---Sentence of the accused was suspended, in circumstances, and he was released on bail."

2022 SCMR 1555 Muhammad Arshad v. The State and another.

"---Ss. 426 & 497---Bail---Suspension of sentence---Benefit of doubt---Benefit of doubt can be extended to accused even at preliminary stage i.e. bail and suspension of sentence."

2. In furtherance of the arguments, it is stated by the counsels that the numerous contradictions in the deposition of PWs in the ocular evidence are made as the evidence is contrary to the medical evidence. There is DNA report, which does not support case of prosecution, which also creates serious doubt in whole of the prosecution case.

3. Syed Shahzad Ali Shah, Advocate for another appellant (Farhan Gul) in support of application for appellant states that the second appellant was convicted on very highly interested and doubtful evidence of prosecution, hence conviction is bad in the eyes of law. The prosecution story has set-up in the FIR and deposed in the Court carries number of discrepancies and his conviction is based on presumption, which cannot be applied under the principles of conviction. A certificate of attendance has been produced by the counsel for the appellant (Farhan Gul) which is placed in the Court file which states that *"It is certified that A/No. 8541918 Mr Farhan Gul Labourer (RTE) is employee of AGE (A) SAKRAND he was present on duty wef: 03-06-2023 to 04-06-2023 at MES Office, AGE (Army) SAKRAND Cantt"*, which is attested by the Assistant Garrison Engineer (Army) Sakrand. This certificate of attendance by the Army Garrison ammunition Depot Sakrand showing that on the day of incident, the appellant Farhan Gul was present at the Army Garrison. Such certificate from a very disciplined organization inspires confidence to the story that the appellant was not present at the scene of crime on the given date as he was on the duty.

4. The learned Prosecutor as well as the learned counsel for the complainant strongly opposed the grant of bail to the present appellant U/s 426 Cr.P.C as they both state that in the present case ingredients of Section 426 Cr.P.C are not attracted in the present case as the appellant are behind bars only since last two years and the concession of such law is to be allowed to the prisoners of prolonged detention and hardship.

5. I have heard the counsels and gone through the case laws as well as the ingredients of Section 426 Cr.P.C, which I hereby reproduce as under for the sake of brevity of the case;

“426. Suspension of sentence pending appeal. Release of appellant on bail. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

[(1A) An Appellate Court shall, except where it is of the opinion that the delay in the decision of appeal has been occasioned by an act or omission of the appellant or any other person acting on his behalf, order a convicted person to be released on bail who has been sentenced-

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction;

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction; or

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction:

Provided that the provisions of the foregoing paragraphs shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Appellate Court, is a hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.”

6. Section 426 (c) Cr.P.C clearly indicates that the concession in clause is to be provided to the appellant facing imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years (which is the case here) of his conviction are to be released under this Section while the sentence are to be suspended by keeping appeal pending. Not only that, but the dictums laid down by the Honourable Superior Court of Pakistan are that even merits of the case are to be considered while invoking Section 426 Cr.P.C. It has come on record that there are several contradictions in the evidence which may holding to the appellant and setting aside of the conviction. The production of a certificate from a well-disciplined institution such as Pakistan Army, where such certificates are not issued as a routine but after due verification and due diligence transpire confidence that the other appellant (Farhan Gul) was on duty at the time of incident.

7. In light of such contentions and observations, I am inclined to **allow** the applications U/s 426 Cr.P.C respectively filed by the appellants in above mentioned appeal to **both** the appellants namely **Waqar Ahmed s/o Suhib Ali Mallah & Farhan Gul s/o Sadaruddin Mallah** and suspend the sentence awarded to the appellants in above mentioned case. Both the appellants/accused should be released subject to their furnishing of solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs only) **each** and PR bond in the like amount to the satisfaction of Additional Registrar of this Court. However, the appeal remains pending in this Court.

JUDGE

Ali.