

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No.S – 62 of 2024

Date	Order with signature of Judge
Hearing of case. 1. For orders on MA No.4901/2024 (426 Cr.PC) 2. For hearing of main case	
Appellant Muhammad Chohan	Through Mr. Ubedullah Malano, Advocate
Respondent State	Through Mr. Shafi Muhammad Mahar, DPG
Date of hearing and order:	26.03.2026

ORDER

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Nisar Ahmed Bhanbhro, J. Through this application, appellant seeks suspension of operation of judgment dated 23.05.2024, passed by learned 1st Additional Sessions Judge/Juvenile and Model Criminal Trial Court-I, Sukkur, in Sessions Case No. 74 of 2023, arising out of FIR No. 63/2022, registered at Police Station Dubbar, whereby the appellant was convicted for the charge of offence under Section 377-B PPC and sentenced to suffer R.I. for fourteen years and to pay fine of Rs. 10,00,000/-. In case of default in payment of fine, the appellant shall suffer further S.I. for two years more. However, the benefit of Section 382-B Cr.P.C. was extended to him.

2. Learned counsel for the appellant contends that the evidence against the appellant was deficient, as the WMO, P.W-09, Dr. Saira, in her evidence, deposed before the trial Court that the victim was not subjected to unnatural lust. Further contends that the appellant is a juvenile offender and the appeal is pending since last 22 months without any fault on the part of the appellant. He contended that the appeal involves arguable points and, in view of the pendency of a large number of cases, there is no likelihood of an early hearing. Hence, the sentence may be suspended and the appellant may be admitted to bail.

3. Mr. Shafi Muhammad Mahar, learned Deputy Prosecutor General, has opposed the suspension of sentence on the ground that the accused is charged in a heinous offence and DNA is matched. He further contended that

there is sufficient evidence available to believe that the appellant has committed the alleged offence. He prayed to dismiss the application.

4. Heard learned counsel for the appellant and the learned D.P.G., and perused the record.

5. Admittedly, the appellant was convicted for an offence under Section 377-B PPC, which is heinous in nature. For deciding an application for suspension of sentence, it has to be seen whether the conviction awarded to the convict was based upon a convincing and confidence inspiring evidence or not? From the tentative assessment of evidence of P.W-09, WMO Dr. Saira, it is inferred that the offence of unnatural lust was not committed with the victim. The record further transpires that the said witness was not cross examined by prosecution and her evidence remained unchallenged during trial. It further transpires that the WMO, while examining the alleged victim, did not find any bruise, abrasion, or mark of violence on the body of the alleged victim, hence she concluded that victim was not subjected to any act as alleged by the Prosecution. It would be apt to reproduce the relevant portion of her evidence as under:-

“.....Thereafter I examined baby Shahida and found no mark of violence seen all over the body, no any bruise abrasion seen on the external genitalia, vagina still not fully developed, no any mark of violence seen on anal region, oral cavity genital region are normal, no site mark or other violence mark seen all over the body, although external genital swabs are taken, clothes of victim are taken and also blood sample are taken, which were sent to SHO concerned for further examination from concerned LUMHS Jamshoro. I issued such provisional MLC and then I received DNA report from LUMHS thereafter on 18.1.2023 I issued final MLC of baby Shahida whereby I opined that sample of accused Muhammad son of Majeed Chohan, the male DNA profile/semen stain spur fraction was not obtained from item/genital swabs sample of victim Shahida daughter of Gul Hassan, as such I was of my opinion that act was not committed on the above said victim.....

6. It further transpires from record that none of the relatives of the alleged victim came forward to record evidence during investigation and trial, including the grandmother, namely Mst. Razul, who produced the alleged victim before the WMO for her examination. Though there is evidence of victim, supporting prosecution case, but she being a minor, the evidentiary value of her statement has yet to be determined on re-appraisal of evidence during the hearing of main appeal.

7. It reflected from record that the appellant remained on bail during trial and there was no allegation of misuse of the concession during trial. Appellant was a juvenile offender and he remained under incarceration for more than 22 months without any progress in appeal, with no fault on his part.

8. Since it is yet to be held, whether the conviction awarded to the appellant by the trial Court can be sustained or not after re-assessment of the entire evidence, particularly when evidence of WMO, P.W-09, Dr. Saira, creates doubt about the culpability of the appellant. Appellant cannot be kept in jail on an assumption that his conviction will be maintained in the future. In case the conviction is not maintained and the appellant is acquitted, the period he spent in jail cannot be repaired by any means. However, if, after reappraisal of the evidence, this Court concludes that the appellant is guilty of the charge, the concession so granted will stand vacated and he will be taken into custody again.

9. In the Case of Maqsood Ahmed Versus the State reported as **2017 SCMR 397**, Honorable Supreme Court of Pakistan suspended the sentence of convict, when the evidence of Medico Legal Officer was not found confidence inspiring, it was held as under:

“3. In this backdrop, when the Doctor (PW7) has not given final opinion about the cause of death of the deceased; when the co-accused of the petitioner namely Zakir and Lal @ Lalu who were allegedly armed at the time of occurrence and were attributed injuries on the injured witnesses, have been acquitted by the learned trial Court and when the complainant himself while appearing before the learned trial Court categorically stated that his father was abducted by someone else and present accused including the petitioner are not his culprits, prima facie, a case for suspension of sentence in favour of the

petitioner is made out. The appeal filed by the petitioner is still pending before the learned High Court and its early disposal is not in sight. The guilt or otherwise of the petitioner shall be determined by the learned High Court after reappraisal of entire prosecution evidence while hearing the criminal appeal filed by the petitioner.”

10. In the Case of Muhammad Arshad Versus the State and another reported as **2022 SCMR 1555**, Honorable Supreme Court of Pakistan upheld the order suspending the sentence of convicts when evidence on record was found not convincing.

11. In the light of above discussion, there are sufficient reasons to believe, at this stage, that the prosecution evidence requires a reappraisal, therefore, continued incarceration of the appellant may not be logical in the peculiar circumstance of the case. As such, the appellant has made out a case for suspension of the sentence of the impugned judgment and for grant of bail. Accordingly, the application under Section 426 Cr.P.C is hereby allowed. The sentence awarded to the appellant through impugned judgment dated 23.05.2024, is suspended. The appellant is admitted to bail, subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs only) and a P.R bond in the like amount to the satisfaction of the Additional Registrar of this Court. Accordingly, M.A. No.4901/2024 stands disposed of.

2. The main appeal is adjourned to **27.04.2026**.

JUDGE