

THE HIGH COURT OF SINDH KARACHI

Criminal Appeal No. 102 of 2023

For hearing of Bail Application.

Appellants : Ali Sher and Jamsher Ali both sons of Arjan and Saleem son of Kareem through M/s. Kashif Hanif and Mallag Assa Dashti, Advocates.

Complainant : Bilwal son of Abdul Rahim Samejo through Mr. Muhammad Iqbal Hingoro, Advocate.

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Date of hearing : 17-04-2023

Date of order : 17-04-2023

ORDER

Adnan Iqbal Chaudhry J. - By M.A. No. 1997/2023 under section 426 Cr.P.C., the Appellants pray for suspension of their sentence and release on bail pending this appeal. On the other hand Mr. Muhammad Iqbal Hingoro Advocate files vakalatnama for the Complainant and requests for an adjournment. But, I am not inclined to grant the adjournment as the Complainant was put on notice of this application as far back on 06-03-2023, and, in any case, the Complainant is not amongst the persons allegedly injured by the Appellants.

2. By the impugned judgment, the Appellants 1 and 2 have been convicted for inflicting injuries falling under sections 337-A(iv) and 337-A(i) PPC, and apart from arsh and daman they have also been sentenced to R.I. of 7 and 1 year to run concurrently. The Appellant No.3 has been convicted for inflicting injuries falling under sections 337-L(ii), 337-F(v), 337-F(i) and 337-L(ii) PPC, and apart from daman he has also been given a short sentence of imprisonment for each injury to run concurrently to a maximum of 4 years R.I.

3. For suspending the sentence of the Appellants Mr. Kashif Hanif, learned counsel for the Appellants 1 and 2 relies on sub-section (2) of section 337-N PPC. Mr. Mallag Assa Dashti, learned counsel for the Appellant No.3 adds that the sentence awarded to his client is also a short one. Learned APG Sindh opposes the suspension essentially on the ground that the sentence of 7 years awarded to the Appellants 1 and 2 is not a short sentence.

Heard the learned counsel, the APG Sindh and perused the record.

4. Sub-section (2) of section 337-N PPC is a non-obstante clause which provides as follows:

“s. 337-N (2). Notwithstanding anything contained in this Chapter in all cases of hurt, the Court may, having regard to the kind of hurt caused by him in addition to payment of arsh, award tazir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of the honour:

Provided that the tazir shall not be less than one third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour.”

Thus, sub-section (2) of section 337-N PPC suggests that in all cases of hurt under Chapter XVI PPC, the additional punishment of imprisonment over and above arsh is meant for those cases where the offender is a previous convict, or a habitual, hardened, desperate or dangerous criminal, or where the offence has been committed by him in the name or on the pretext of the honour. Such effect of sub-section (2) of section 337-N PPC is also discussed in the cases of *Haji Maa Din v. The State* (1998 SCMR 1528) and *Abdul Wahab v. The State* (2019 SCMR 516).

5. Counsel for the Appellants submit that the Appellants did not have a previous criminal record, and thus in awarding them imprisonment over and above arsh and daman, the learned trial court ignored sub-section (2) of section 337-N PPC. The point raised has force. The hearing of the appeal is also likely to take some time. In

view of the foregoing, the sentence against the Appellants is suspended and they are granted bail subject to furnishing solvent surety in the sum of **Rs. 200,000/- [Rupees Two Hundred Thousand Only]** each alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court.

To come up on **11-05-2023**.

*SHABAN**

JUDGE