ORDER SHEET

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No. S- 114 of 2022

[Hakim Ali and another v. The State]

For hearing of bail application U/s 426 CRPC (MA No.8257/22)
For hearing of case.
For order on Bail application U/s 426 CRPC (MA No.4336/23)

Cr. Appeal No. S- 120 of 2022

[Ghulam Qadir v. The State]

For hearing of Bail application U/s 426 CRPC (MA No.3606/23)
For hearing of case.

16.10.2023

Mr. Imtiaz Ali Channa, advocate for appellants in Cr. Jail Appeal No. S- 114 of 2022

Mr. Aijaz A. Awan, Advocate for appellantin Cr. Appeal No. S- 120 of 2022

Mr. Ghulam Ali Mughal, advocate for complainant

Mr. Siraj Ahmed Bijarani, A.P.G.

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Through listed application(s), appellants seek suspension of sentence, awarded to them by the trial court through impugned judgment dated 24.08.2022 passed in Crime No. 70 of 2021 registered at P.S B-Section Dadu for offenses punishable under Sections 324, 337-A(i), F(ii), F(iv), 504, 147, 148 & 149 P.P.C.

2. The allegation against the appellants / accused as per FIR is that they caused hatchet blows to the complainant, his father and brother with intention to commit their murder. The appellants were charged and tried by the trial Court and vide judgment dated 24.08.2022 they were found guilty and were sentenced to suffer rigorous imprisonment for seven (07) years.

3. At the outset, I asked learned counsel representing the appellants to address this Court in terms of subsection (1-A) (b) of Section 426 Cr.P.C., inserted under the Code of Criminal Procedure (Amendment) Act, 2011; on the aforesaid proposition, learned counsel for the appellants in an

unecovocal terms contended that the sentence awarded to the appellants is short being seven years rigorous imprisonment and the appeals are likely to take sufficient time for hearing being pendency of heavy backlog of cases on the board of this court. Besides the appellants have prima-facie case on merits and referred to various portions of the evidence and contended that there is nothing on record against the appellants in the evidence; however, they have been awarded the subject sentence based on purported evidence relied upon by the trial court. Learned counsel referred to Jail Roll of the appellants and submitted that they have almost served out the sentence, i.e. 05 years 07 months and 15 days and still the appeals have not been heard and decided in-spite of lapse of sufficient time as such the case of the appellants falls within the ambit of subsection (1-A) (b) of Section 426 Cr.P.C. Per learned counsel there is nothing on record to suggest that the appeallants were / are either habitual offenders, hardened desperate or dangerous criminal, as observed by the trial court while awarding conviction, therefore, they are liable to be released on bail in terms of Section 426 Cr.P.C.

4. The aforesaid stance of the appellants has been refuted by the counsel representing the complainant on the premise that the trial court has appreciated the evidence in broad perspective and the charge against the appellants stood proved, medical evidence supported the case of prosecution, the appellants are habitual offenders and they in connivance with each other and with their common object caused grievous hurts to the complainant party with intention to commit their murder as such they are not entitled for any leniency.

5. Learned A.P.G. has adopted the arguments of complainant's counsel on the ground that the sentence awarded to the appellants does not fall within the ambit of short sentence. He prayed for dismissal of the instant applications.

6. I have heard learned counsel for the parties and perused the record with their assistance.

7. There is no cavil to the proposition that Section 324 PPC provides that if hurt is not caused in an attempt to commit Qatl-e-amd, the offender shall be punished with imprisonment which may extend to ten years and shall also be liable to fine and if hurt is caused, he shall in addition to the

imprisonment and fine as aforesaid, be liable to punishment provided for the hurt caused. The punishment provided for the kind of hurt under Section 337-F(ii) of the Act (ibid) is payment of 'Daman' which is mandatory and the imprisonment for a term which may extend to three years as Tazir, is discretionary and may be awarded according to the facts and circumstances of each case. The word 'Tazir' has been defined in clause (1) of section 299 of the Act (ibid) which means punishment other than Qisas, Diyat, Arsh or Daman. Subsection (2) of Section 337-N of the Act provides that notwithstanding anything contained in this chapter, in all cases of hurt, the court may having regard to the kind of hurt, in addition to payment of arsh, award 'Tazir' to an offender who is a previous convict, habitual or hardened desperate or dangerous criminal. The bare reading of the above stated sections i.e. 324, 337-F(ii) and 337-N(2) of the Act would show that the provisions thereof do not supplement each other rather they are at variance from each other. The punishment provided under Section 324 of the Act is imprisonment with fine under 'Tazir' and word 'shall' has been used making it mandatory in nature, whereas the punishment provided for the offence of the hurt are the payment of arsh or daman as the case may be, which are mandatory and the award of imprisonment of various terms without any fine has been left to the discretion of the Court; that the provisions of subsection (2) of Section 337-N of the Act overrides Section 324 and all other sections providing punishment for offences of hurt contained in the chapter; that Subsection (2) of section 337-N begins with non obstante clause as 'Notwithstanding anything contained in this Chapter in all cases of hurt, the Court may", give it as overriding effect over all other sections providing punishment for hurt. That under this subsection the offender beside payment of Arsh may be awarded punishment of 'Tazir' who is previous convict, habitual or hardened desperate or dangerous criminal.

8. Primarily, the scope of Section 426, Cr.P.C. deals with suspension of sentence pending appeal, and in this regard, only tentative assessment of evidence is available and judgment is permissible, and detailed appraisal of evidence is to be avoided. On the aforesaid proposition, I am fortified with the decision of Honourable Supreme Court in the case of Shamshad Hussain v. Gulraiz Akhtar (**PLD 2007 SC. 564**).

9. In view of the above, this Court cannot enter into re-appraisal of evidence that should be considered at the time of hearing of appeal. However it is the mandate of appellate Court to look into the facts in the impugned judgment, and if the Court concludes that the judgment suffers from any legal error, it would be justified to suspend the sentence and grant bail. Keeping in mind the above proposition, I have also examined the impugned judgment and am of the tentative view that certain legal, as well as factual aspect of the case, require detailed deliberation and need assistance of counsel to trash the chaff from the grain.

10. Without touching merits of the case and keeping in view the pendency of heavy backlog of cases, the hearing of captioned appeal is not foreseen in near future; therefore, the sentence of appellants is suspended during pendency of captioned appeal and as a result whereof they are directed to be released on bail in the present crime, subject to their furnishing solvent surety in the sum of Rs.1,00,000/- (One Lac Only) each and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court.

11. The listed applications are disposed of accordingly. The main appeal is adjourned.

JUDGE

Karar_Hussain/PS*