

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Appeal No.D- 19 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing of MA 1913/2022.
3. For hearing of main case.

15.03.2022.

Mr. Zubair Ahmed Khuhawar, Advocate for appellant.
Mr. Shahzado Saleem Nahiyoon, Additional P.G.

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This is an application (MA No.1913/2022) for suspension of sentence filed u/s 426 Cr.P.C. Appellant Shakeel Akhtar Head Constable was tried by learned Judge ATC-II Central Prison, Hyderabad in Special Case No.31/2020 for offences under Sections 324, 353, 392, 337-F(i), 223, 224, 225, 427 PPC r/w Section 6/7 of ATA, 1997. After regular trial, vide judgment dated 26.02.2022, appellant HC Shakeel Akhtar and others have been convicted and sentenced as mentioned in Para 57 of the impugned judgment which is reproduced as under:-

“57. As a corollary of my discussion while deciding Point No.1 to 4, I am of the opinion that testimony of the prosecution witnesses is consistent, in line with each other on material counts and worthy of credence witnesses have been cross examined at sufficient length, but nothing fruitful came out on record in favour of defence, therefore, accused Ramzan alias Ramoo son of Abdullah by caste Gujrio Mallah is found guilty for the commission of offences punishable under section 224, 353 and 392 PPC so also offence under Section 6(2)(m)(n) punishable under Section 7(1)(h) of Anti-Terrorism Act, 1997, therefore, accused Ramzan alias Ramoo son of Abdulla By caste Gujrio Mallah is convicted and sentenced for rigorous imprisonment for two years for the commission of offence under section 224 PPC, for the commission of offence punishable under section 353 PPC two years rigorous imprisonment and for the commission of offence punishable under section 392 PPC 7 years rigorous imprisonment and also pay fine Rs.50,000/-, he is also convicted and sentenced for the commission of offence under Section 6(2)(m)(n) punishable under Section 7(1)(h) Anti-Terrorism Act, 1997 for five years and with fine Rs.50,000/- in default of making payment of fine he will suffer further rigorous imprisonment for 6 months, all the sentences shall run concurrently. Accused ASI Majnoo son of Basar by caste Menghwar is convicted for two years simple imprisonment with fine of Rs.10,000/- for the commission of offence punishable under Section 223 PPC in case of default of making payment of fine he will suffer further simple imprisonment for 3 months, likewise

accused Head Constable Shakeel Akhtar son of Muhammad Saleem by caste Bahrani is also convicted for two years simple imprisonment with fine of Rs.10,000/- for the commission of offence punishable under section 223 PPC in case of default of making payment of fine he will suffer further simple imprisonment for 3 months. As for accused Police Constable Ahmed Ali is concerned, proceedings against him are already abated vide order dated 9.9.2020, whereas, accused Ghulam Hussain alias Babu Shah is declared proclaimed offender his case be kept on dormant file till his arrest. Benefit of Section 382-B Cr.P.C is extended to all the three present accused. This judgment of conviction is made under section 265-H(2) Cr.P.C. Accused Ramzan alias Ramoo produced in jail custody he is remanded back into jail custody to serve the sentences, whereas accused ASI Majnoo and accused HC Shakeel Akhtar are present on bail, they are taken into custody and remanded to jail custody to serve the sentence, their bail bonds cancelled and surety stands discharged. The accused persons have been furnished with copies of judgment and informed that as per section 25(3) of Anti-Terrorism Act, 1997 they can file appeal within the statutory period from this day.”

The above sentences were ordered to run concurrently. However, appellant has been extended benefit of Section 382-B Cr.P.C. Appellant has filed this appeal against his conviction and sentence which was admitted for regular hearing vide order dated 08.03.2022. Alongwith appeal, an application under Section 426 Cr.P.C was also filed and notice of such application was issued to Additional P.G.

Learned Advocate for appellant mainly contended that appellant has been sentenced for two (02) years R.I and such sentence is short one and hearing of the appeal will take time. It is submitted that trial Court has committed several illegalities while conducting the trial. Lastly, it is submitted that appellant was on bail during trial of the case. In support of his submissions, learned Counsel has relied upon the cases of ABDUL HAMEED v. MUHAMMAD ABDULLAH and others (1999 SCMR 2589), NAZEER ALI alias NAZEER v. The STATE (2011 YLR 403) and NASEER SHAH and others v. The STATE (2015 P.Cr.LJ 758).

Learned Additional P.G recorded no objection for suspension of sentence on the ground that sentence of two (02) years is short one, so also in view of the case law relied upon by learned advocate for the appellant.

We are inclined to suspend the sentence of appellant for the reasons that the sentence awarded to appellant by trial Court for two (02) years is a short sentence and hearing of appeal will take sufficient time due to huge

pendency of the cases at this circuit court. It is also argued that appellant was on bail during trial. In the case of ABDUL HAMEED v. MUHAMMAD ABDULLAH (1999 SCMR 2589) it is held as under:-

“4. On the other hand, Mr. S.M. Masud, learned Advocate Supreme Court, for the petitioner, has urged that the learned Additional Sessions Judge without putting to the petitioner the notice as to the enhancement of the sentence and without hearing the arguments, enhanced the imprisonment for three years to five years and the amount of fine from Rs.5,000 to Rs.10,000. Without going to the question, whether any notice was issued for the enhancement by the learned Additional Sessions Judge (as according to the State counsel such a notice was issued). We are inclined to hold that since the sentence was short and as the sentence was enhanced by the learned Additional Sessions Judge from three years to five years, it was fit case in which the learned Judge in Chambers P` should have exercised the discretion in favour of the convict. We convert the above petition into appeal and admit the petitioner to bail in the sum of Rs.2,00,000 (two lacs) with one surety in the like amount to the satisfaction of the trial Court.”

Keeping in view the above case law relied upon by learned Counsel, as the sentence of 02 years is short sentence. Accordingly, the sentence awarded to the appellant vide judgment dated 26.02.2022 is suspended during pendency of appeal. Appellant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and P.R Bond in the like amount to the satisfaction of the Additional Registrar of this Court. Office is directed to prepare the paper book well before the next date of hearing. It is ordered that this appeal shall be heard on **12.04.2022**.

Application for suspension of sentence (MA No.1913/2022) is allowed in above terms.

JUDGE

JUDGE

Tufail