

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Const. Petition No. D- 2214 of 2016.**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For katcha peshi.

**06-09-2016**

M/s Mehfooz Ahmed Awan and Farhan Ali Shaikh advocate for petitioner.  
Mr. Saleem Akhtar, Additional P.G. for the State.

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Petitioner Niaz Ahmed was tried by learned Judge, ATC, Naushehro Feroze in special cases Nos. 87,88,89 and 97 of 2012 . On conclusion of trial, vide common judgment dated 27.2.2016, petitioner Niaz Ahmed was convicted and sentenced as under:

“i). For the offences punishable under sections 353,504 PPC sentenced to R.I for two years for each offence and under sections 220 and 506(2) PPC R/W section 7(h) of Anti-terrorism Act, 1997 sentenced to R.I for five years and to pay fine of Rs. 10,000/- (Ten thousand). In case of default of payment, he shall suffer R.I for six months more.

ii). For the offence punishable under sections 353 PPC sentenced to R.I for two years and under section 506(2) PPC sentenced to R.I for four years for deterring PC Nazar Muhammad Jatoi from his lawful duty and extending him threats.

iii). For the offences punishable under sections 365,395 and 452 PPC sentenced to R.I for four years and also pay fine of Rs. 10,000/- (Ten thousand) for each offence. In case of default of payment, he shall suffer R.I for six months more.

iv). For the offence punishable u/s 342 PPC sentenced to R.I for one year”.

All the sentences were ordered to run concurrently.

2. Petitioner Niaz Ahmed filed Crl. Appeals Nos.D-46,47,48,49 of 2016 and Crl.Jail Appeal No.D-50 of 2016. By filing instant Constitution Petition, petitioner Niaz Ahmed seeks suspension of his sentence in crime No. 49 of 2012 of P.S. Muhbat Dero for offences under sections 353, 220, 506/2, 337H(ii), 504 PPC r/w Section 7 ATA,1997, during pendency of appeals.

3. Notice was issued to learned Additional P.G.

4. Learned advocate for petitioner mainly argued that petitioner is in jail since four years and he has served substantive sentence. Learned counsel for petitioner further contended that sentence of five years is short one and hearing of appeals would take long time. In support of his contentions, he has relied upon cases of **Abdul Hameed v. Muhammad Abdullah and others (1999 SCMR 2589)** and **Nazeer Ali alias Nazeer v. the State (2011 YLR 403)**.

5. Learned Additional P.G for the State recorded no objection for suspension of sentence during pendency of appeals.

6. After hearing learned counsel for the parties, we have carefully perused the impugned judgment and perused Jail Roll of petitioner. From perusal of judgment, it transpires that petitioner has been convicted and sentenced upto five years and fine. Petitioner/convict Niaz Ahmed is in custody since four years. Sentence of five years is the short one. Keeping in view the huge pendency of appeals, hearing of appeals would take some time. In case of Abdul Hameed (supra), Hon'ble Supreme Court suspended the sentence while holding that sentence was a short one. It is held as follows:

“ On the other hand, Mr. S.M. Masud, learned advocate Supreme Court, for the petitioner, has argued 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 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”.

7. Keeping in view the dictum laid down in the aforesaid authorities and since the sentence of five years is short one. Therefore, sentence awarded to the petitioner Niaz Ahmed in crime No. 49 of 2012 under sections 353, 220, 506/2, 337H(ii), 504 PPC r/w Section 7 ATA, 1997 of P.S.Muhbat Dero is suspended during pendency of appeals subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Two lacs) with PR bond in the like amount to the satisfaction of Additional Registrar of this Court.

8. In view of above, instant petition stands disposed of.

JUDGE

JUDGE