

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.3193 of 2018

ORDER:

This revision is arising out of the order dated 12.11.2018 passed in Crl.M.P.No.1129 of 2018 in Crl.A.No.153 of 2018 in S.C.No.225 of 2016 by the learned Assistant Sessions Judge, Adilabad.

2. Brief facts of the case are that :

The petitioners No.1 to 4 are the appellants, who are accused No.2 to 5 in S.C.No.225 of 2016. The learned Assistant Sessions Judge has convicted them in S.C.No.225 of 2016 for the offence punishable under Section 25(1-A) of Arms Act, 1959 and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for a period of three months each. Aggrieved by the impugned order, the petitioners have preferred an appeal before the lower appellate Court which is numbered as Crl.A.No.153 of 2018 and they have also filed a petition in Crl.M.P.1129 of 2018 under Section 389(1) Cr.P.C. for suspension of sentence and the same was dismissed by the lower appellate Court. Challenging the same, the petitioners have preferred the present revision case.

3. Section 389 the Code of Criminal Procedure, 1973 reads as under:

Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

4. Learned counsel for the petitioners submits that the lower appellate Court has dismissed the petition filed under Section 389(1) Cr.P.C for suspension of sentence on the ground that the petitioners hail from other State i.e., Maharashtra and that they were involved in a serious offence of Section 25 (1-A) of Indian Arms Act.

5. He further submits that the petitioners are ready to furnish any security for their appearance before the lower

appellate court and to enable them to prosecute the appeal and the sentence imposed by the lower appellate Court may be suspended.

6. On the other hand, learned Public Prosecutor submits that, in view of provision under Section 389 (1) Cr.P.C., the lower appellate Court is entitled for suspending the sentence but on furnishing sufficient surety for their appearance before it.

7. The fact that the petitioners are the residents of Maharashtra does not disqualify them for seeking suspension of sentence. The lower appellate Court, if intended to suspend the sentence, ought to have imposed some conditions as per bail provisions under Cr.P.C. Therefore, the order passed by the lower appellate Court is hereby set aside.

8. The petitioner is given liberty to file a fresh petition under section 389(1) Cr.P.C. before the appellate Court for suspension of sentence and the appellate Court is directed to pass appropriate order in view of the provisions under Section 389(1) Cr.P.C.

9. With this observation, the Criminal Revision Case is disposed of.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 23-11-2018.

Note : C.C. Monday

(b/o) Gvl

