

2902023:PHHC:076576

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22175-2023
Date of Decision: May 25, 2023

SANT KUMAR AND ANR. Petitioners

Versus

STATE OF HARYANA Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Chaudhary Advocate and
Mr. Stephan Masih, Advocate for the petitioners.
Mr. Gaurav Bansal, DAG, Haryana.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 CrPC read with Section 389 CrPC, prayer has been made for setting aside of order dated 13.03.2023 passed by Ld. Sessions Judge, Fatehabad declining the prayer for suspension of sentence in criminal appeal No.58-2023 arising out of judgment/order of sentence dated 18.01.2023 passed by Court of Ld. CJM, Fatehabad wherein the petitioners have been convicted under Sections 420, 467, 468, 471 read with Section 120-B IPC and sentenced to undergo in the following manner:-

Section 420 IPC read with Section 120-B IPC	RI 2 years and fine Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 3 months.
Section 467 IPC read with Section 120-B IPC	RI 5 years and fine Rs.50,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 6 months.

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Section 468 IPC read with Section 120-B IPC	RI 7 years and fine Rs.50,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 6 months.
Section 471 IPC read with Section 120-B IPC	RI 7 years and fine Rs.50,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 6 months.

2. Learned counsel for petitioners submits that though the first appeal filed at the instance of petitioners is pending consideration, however, prayer for grant of suspension of sentence has been declined. He further submits that out of 7 years of sentence, petitioners have already undergone two years and two months and the disposal of first appeal is likely to take some time whereas the same involves more than prima facie case on merits.

3. On the other hand, prayer made herein has been vehemently opposed at the instance of learned State counsel while referring to the allegations levelled against the petitioner which, as per him have been duly proved by the prosecution before the trial Court, thereby resulting into his conviction followed by an order of sentence.

4. I have heard learned counsel for the parties and gone through the paper-book.

5. In the facts and circumstances of the present case, the petitioners stood convicted and sentenced vide judgment dated 18.01.2023 passed by the Court of Chief Judicial Magistrate Fatehabad and the remedy of statutory first appeal has been availed at their instance which is pending consideration before the First Appellate Court.

6. As per the custody certificate, the petitioners have undergone actual sentence of a period of more than two years and two months out of total sentence of seven years, neither they are previous convicts nor they ever missed the bail during trial. Further, both the petitioners have been implicated on the basis of disclosure made by co-accused. More than that the trial Court in its judgment in Para 36 itself recorded the factum of discrepancies in the prosecution evidence and the compliance of Section 65-B of the Evidence Act, as regards the documentary evidence relied upon against appellants is also debatable.

7. Considering the aforesaid facts and circumstances wherein the First Appellate Court has failed to even discuss the prima facie merit of appeal, I deem it appropriate that during the pendency of First appeal before Ld. District and Sessions Judge, Fatehabad, the sentence awarded to petitioners in pursuance to judgment/order of sentence dated 18.01.2023 passed by Court of CJM Fatehabad shall remain suspended and the petitioners shall be released forthwith on furnishing of their bail bonds/surety bonds to the satisfaction of the First Appellate Court.

8. Ordered accordingly.

9. However, in the facts of the present case, the First Appellate Court is requested to dispose of the appeal preferably within a period of six months.

25.05.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

