HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Misc II Suspension Of Sentence Application (Appeal) No. 49/2024

Hameera S/o Fulla Pargi, Aged About 32 Years, B/c Pargi Meena, R/o Mandwal, P.s. Kotada, Dist. Udaipur (Raj.).
(Lodged In Central Jail, Udaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. JVS Deora
For Respondent(s) : Mr. Deepak Choudhary, GA cum AAG

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE SAMEER JAIN (Through VC)

Order

05/02/2025

1. The appellant-applicant herein has been convicted and sentenced as below vide judgment dated 13.09.2019 passed by the learned Additional Session Judge No.3, Udaipur in Sessions Case No.27/2016 :

Offence	Sentence	Fine
447 IPC	03 months SI	Rs.500/- in default of payment of fine, further undergo 5 days Addl.S.I.
302/34 IPC	Life Imprisonment	Rs.50,000/- in default of payment of fine, further undergo 10 months Addl.S.I.-
Both the sentences were ordered to run concurrently		

2. The first application for suspension of sentence filed by the applicant-appellant was dismissed vide order dated 10.11.2021.

3. The appellant-applicant has preferred this second application under Section 389 Cr.P.C. seeking suspension of sentence during the pendency of the appeal and for release on bail on the ground that petitioner has remained in custody for more than 10 years.

4. The appellant-applicant has preferred the present application on the solitary ground that he has remained in custody for more than 10 years and there is no likelihood of appeal being taken up for hearing in near future. Relying upon the directions of Hon'ble The Supreme Court dated 15.09.2022 in **Sonadhar v. The State of Chhattisgarh : SLP (Crl.) No.529/2021**, learned counsel prayed that the sentence of the applicant be suspended and he be enlarged on bail.

5. Learned counsel argued that no reasons and / or aggravating circumstances exist for denial of bail to the applicant while placing reliance on the order dated 05.10.2021 of Hon'ble The Supreme Court in **Saudan Singh v. The State of Uttar Pradesh : SLP (Crl.) No.4633/2021.** He read the relevant part/observations made therein and submitted that the High Court should grant bail if the accused has served more than 10 years' sentence, except certain circumstances, and that none of the exceptions are applicable in the present case.

6. Learned Public Prosecutor opposed the application for suspension of sentence with the submission that as the appellant-applicant has committed heinous offence, suspension of sentence of such offender would send adverse message in the society. However, he has not denied that the appellant-applicant has already undergone sentence of over 10 years during trial and after sentence.

7. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

8. It is to be noted that long list of criminal appeals even filed in the year 2008 are pending hearing; there is no possibility that the present appeal can be taken up for hearing in near future.

9. Hon'ble The Supreme Court in the case of Sonadhar (supra), while dealing with SMW (Crl.) No.4/2021 pertaining to 'life convicts in jail whose appeals are pending before the High Court' inter-alia, issued the following directions:-

> "We consider appropriate to issue directions in terms of the aforesaid suggestions to the Patna High Court and on a pari materia basis to even the other High Courts. However, in order to carry out this exercise, the data would have to be compiled of such of the persons who have been in custody for more than 10 years and more than 14 years, with these persons being considered for grant of bail pending appeal, if there is no chance of hearing of the appeal in the near future, unless there are reasons for denial of bail. We can understand if any of the parties is delaying the appeal itself but short of that, we are of the view that all persons who have completed 10 years of sentence and appeal is not in proximity of hearing with no extenuating circumstances should be enlarged on bail."

10. Prior to that in the case of Saudan Singh (supra) also observations were made regarding grant of bail in cases where convicts have undergone sentence for sufficiently long time and appeals were pending at the High Court stage with exceptions indicated therein.

11. In the present case as observed herein-before, the appellant-applicant has already undergone sentence for over 10 years and apparently, there are no chances of hearing of the present appeal in near future. Except for the fact that the appellant-applicant was involved in offence leading to his conviction for life, nothing has been brought on record by way of aggravating circumstances for denial of suspension of sentence.

12. Consequently, following the order in the case of Sonadhar (supra) and observations made in Saudan Singh (supra), without making any observations on merits of the case, we are inclined to suspend the substantive sentence of the appellant-applicant, namely, **Hameera S/o Fulla Pargi**, who has served the sentence of more than 10 years during trial and upon conviction, during the pendency of the appeal.

13. Accordingly, the instant second application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the substantive sentence passed by the learned Additional Session Judge No.3, Udaipur in Sessions Case No.27/2016 vide judgment dated 13.09.2019, against the appellant-applicant, namely, **Hameera S/o Fulla Pargi**, shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.50,000/- each with two sureties of Rs.25,000/- each to the satisfaction of learned trial Judge for his appearance in this court on 05.03.2025 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:

1. That he will appear before the trial court in the month of January of every year till the appeal is decided.

2. That if the applicant change the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.

3. Similarly, if the sureties change his address(s) he will give in writing their changed address to the trial court.

14. The learned trial court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case relating to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not been taken into account for statistical purpose relating to pendency and disposal of the cases in the trial court. In case the said accused-applicant do not appear before the trial court, learned trial Judge shall report the matter to the High Court for cancellation of bail.

(SAMEER JAIN),J **(VINIT KUMAR MATHUR),J**

1-SanjayS/-