

THE HIGH COURT OF MADHYA PRADESH

Cr.A. No.1323/2008

(Gaja & Ors Vs. State of M.P.)

Indore, Dated:29/10/2018

Shri C.L. Yadav, learned Senior Counsel with Shri Akhilesh Sharma, learned counsel for the appellant.

Shri Swapnil Sharma, learned Govt. Advocate for the respondent/State.

Heard learned counsel for the parties on IA No.7530/2018-an application under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 for suspension of conviction of appellant No.2-Santosh S/o Makrani.

Appellant No.2-Santosh has been convicted under Section 326 of the IPC and sentenced to undergo 5 years R.I. and to pay fine of Rs.1,000/- with default stipulation, vide judgment dated 17/11/2008 passed by Ist Additional Sessions Judge, Dhar in S.T. No. 126/2006.

Learned Senior Counsel for the appellant submits that the appellant filed the present Criminal Appeal on 21/11/2008 alongwith application for suspension of custodial sentence, which was admitted for final hearing and his application for suspension of custodial sentence was allowed by this Court, vide order dated 25/11/2008 and he was directed to be released on bail upon furnishing personal bond to the tune of Rs.25,000/- with a surety bond in the like amount to the satisfaction of the trial Court for his appearance before the Registry of this Court 05/01/2009 and thereafter as may be directed.

Learned Senior Counsel for the appellant submits that after released on bail since approximately last 10 years, the appellant has regularly marked his presence before the Registry of this Court. It is also submits that the appellant No.2-Santosh belongs to the Scheduled Tribes community and he is highly qualified person. He is eligible for various

employments and is having bright future. Father of the appellant-Markani S/o Chogalal, who was working as Teacher in Govt. school and during the pendency of this appeal, he died on 06/09/2011. After that he became eligible to seek compassionate appointment and the benefit of compassionate appointment can be obtained by him within 7 years from the death of his father, however, due to conviction in the criminal case, he could not avail the opportunity of compassionate appointment and very soon he will become over age. His carrier is suffering due to continuously losing opportunities and thus forced to darken his bright future in waiting for disposal of present appeal. The appellant also wants to contest the election, which is going to be held in November, 2018.

It is further submitted by learned Senior Counsel for the appellant that as per the findings given by the trial Court, there was no pre-meditation and it is a case of free fight. It is further submitted that both the parties have settled their dispute and entered into the compromise. They have moved an application under Section 320(2) of the Cr.P.C. for compounding the offence, which has been kept pending by this Court contending that this application shall be considered at the time of final hearing of this appeal. Under these circumstances, he prays for suspension of conviction of the appellant.

On the other hand, learned Public Prosecutor opposed the application and prayed for its rejection.

Heard learned counsel for the parties and perused the record.

It is settled position of law that the appellate Court has the power to suspended the conviction under Section 389(1) of the Cr.P.C., however, in the case of *Navjot Singh Siddhu Vs. State of Punjab*, AIR 2007 SC 1003 and *Ravikant S. Patil Vs. Sarvabhoma S. Bagli*, (2007) 1 SCC 673, the Hon'ble apex Court has held that stay of the

order of conviction by an appellate court is an exception. It is accepted from the person seeking stay that he should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. However, grant of stay can be resorted to in rare cases depending upon the special facts of the case.

In the light of the aforesaid judgments of Hon'ble apex Court after examining the contention made on behalf of the learned senior counsel for the appellant, it reveals that the appellant has been convicted for the offence under Section 326 of the IPC and as per the findings given by the trial Court, there is specific allegation against the appellant that he has caused grievous injury to injured Mukut by Dhariya, which is also found prove by the trial Court. It is submitted that the present appeal is pending since 2008 and during the pendency of this appeal father of the appellant has died in the year 2011, however, the appellant has not filed any document to demonstrate that he is the only eligible person in his family, who can apply for the compassionate appointment and the same has been rjected on the ground that he is the convicted person in criminal case. The appellant has not filed any application for early hearing till September, 2018 and first time on 05/09/2018, he has filed an application for early hearing before this Court, which was disposed of with following directions to the Registry:-

1. To process the main admitted matter, if ready in all respects, as per its turn, under caption “**High Court Expedited Cases**” or any other suitable caption of priority cases, whichever is earlier.
2. Parties is at liberty to apprise the Registrar (Judicial) about any other suitable priority category in which the main admitted matter can proceed in addition to “**High Court Expedited Cases**” or the caption already assigned by the Registry. The Registrar (Judicial) after due scrutiny shall issue instructions to the concerned Dealing Assistant to update the

main matter in such other appropriate category, so that the same can proceed for final hearing in the category, wherever it is earlier, as per the CMIS software.

3. Further liberty is granted to the parties mention the main matter, in cases of exceptional urgency, for appropriate directions before DB-I, by way of mentioning slip without filing any formal application for urgent hearing.

Considering the arguments advanced by the learned counsel for the parties and looking to the facts and circumstances of the case, this court is of the view that after lapse of 10 years of filing of this appeal, the prayer made by the learned Senior Counsel for the appellant for suspension of conviction is not deemed to be acceptable. Accordingly, IA No. 7530/2018 is hereby dismissed.

List the appeal for final hearing in due course.

(S.K. Awasthi)
Judge

skt