

Hemraj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-13-1999

Reported in : II(1999)DMC752; 2000(1)WLC718

Judge : Shiv Kumar Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389(2)

Appeal No. : Criminal Misc. Bail Application No. 531 of 1999

Appellant : Hemraj

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, P.P.

Advocate for Pet/Ap. : A.K. Gupta, Adv.

Disposition : Application allowed

Judgement :

Shiv Kumar Sharma, J.

1. The applicant was convicted and sentenced under Sections 304-B, 498-A, 202 and 201 of the Indian Penal Code rate judgment dated March 25, 1998 of the learned Sessions Judge, Karauli. Appeal preferred by the applicant against the said judgment was admitted by this Court after receiving the record on August

4,1998 and it was listed for hearing in regular course. Thereafter learned Sessions Judge made a request to send the record of the case back as the trial of the co-accused was pending. This Court acceded the request and vide order dated July 26,1999 transmitted the record back directing the Sessions Judge to send it again as soon as the trial is concluded.

2. In the instant application under Section 389, Cr.P.C, the contention of the applicant is that since June 29,1997 he is behind the bars and there are no chances of early disposal of the appeal, since the record of the case has been sent back and it will only be received back after completion of the trial of co-accused. Under these circumstances the sentence awarded to him may be suspended.

3. I have heard Mr. A.K. Gupta, learned Counsel appearing for the applicant and Mr. S.S. Rathore, learned Public Prosecutor.

4. Sub-section (2) of Section 389, Cr.P.C. provides for the suspension of execution of sentences or orders, by the High Court pending appeal and for release of the appellant on bail. The vital consideration for grant of bail is that the accused must have prima facie a good case to consider. The punishment to which the accused may be liable if the conviction is confirmed, is also a factor to be considered but this factor that accused likely to serve substantial part of sentence before final decision, cannot be brushed aside. The issue of delay occasioned by the High Court's own inability to hear the appeal also cannot be ignored.

5. In Bhagwan Rama Shinde Gosai and Ors. v. State of Gujarat, JT 1999 (4) SC 1=V (1999) SLT 489 (SC)=III (1999) CCR 55 (SC), Their Lordships of the Supreme Court had occasion to consider the provisions contained in Section 389, Cr.P.C. In the said case the accused were convicted and sentenced under Sections 392 read with Section 397, I.P.C. to rigorous imprisonment for 10 years. They filed an appeal before High Court of Gujarat and moved for suspension of sentence but that was not allowed. At a later stage they again moved for suspension of sentence and that too was dismissed. They made a motion for hearing their appeal expedited but that also was declined by the High Court on the premise that the High Court is having older appeals on the board. It was indicated

by Their Lordships of the Supreme Court that if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. It was propounded thus:

'When the Appellate Court finds that due to practical reasons such appeals cannot be disposed of expeditiously the Appellate Court must bestow special concern in the matter of suspending the sentence. So as to make the appeal right, meaningful and effective.'

6. In this case as already stated the record of the case has been sent back and there are no chances of early disposal of appeal. The applicant was sentenced to undergo eight years' rigorous imprisonment and he is in confinement for a period of more than two years. Under these circumstances to make the applicant's right of appeal meaningful and effective I am inclined to suspend the sentence awarded to the applicant. I therefore direct the applicant to be released on bail on his executing a bond in the sum of Rs. 30,000/- with one surety of like amount to the satisfaction of Sessions Judge, Karauli and he is further directed to remain present before this Court on 22nd October, 1999 and as and when he is called upon to do so. The applicant is directed not to make any attempt to tamper with the witnesses, to be produced in the trial of the co-accused.

7. The application stands allowed accordingly.

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