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Yashpal @ Satpal. Vs State.

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Court : Delhi

Decided On : Sep-14-2010

Judge : MR. JUSTICE Anil kumar ; Mr. Suresh Kait , J J.

Acts : Indian Penal Code (IPC) - Sections 365 ,396, 302, 395, 412 ,212, 34

Appeal No. : Crl. MB No. 1310/2010 ; 395/2010.

Appellant : Yashpal @ Satpal.

Respondent : State.

Advocate for Def. : Mr. Lovkesh Sawhney, Adv.

Advocate for Pet/Ap. : Ms. Anup Bhambani ; Ms. Nisha, Advs.

Judgement :
1. Whether reporters of Local papers may be YES allowed to see the judgment?

2. To be referred to the reporter or not? NO

3. Whether the judgment should be reported in NO the Digest?

ORDER

The appellant/applicant has sought suspension of his sentence and to be enlarged on bail in the appeal filed by him against judgment and order of conviction and sentence dated 22nd September, 2007 and 9th October, 2007 in S.C. No. 1/2005

arising out of FIR 486/2002, P.S. Kalyan Puri under Section 365/396/302/395/412/212/34 of IPC. The appellant/applicant has contended that he has already spent 8 1/2 years in judicial custody and his long incarceration has rendered in his family destitute. It is further asserted that he has become depressed as he has been unable to fulfill his responsibilities. It is contended that he has a good prima facie case as the Sessions Court did not appreciate the deposition of Ms. Gayatri Devi(PW-4) that four persons went in her son's vehicle and who were identified as Sanjay, Manju, Gajender and Devendri and she had not stated anything about the appellant and she was even declared hostile. Reliance has also been placed on the fact that Gayatri Devi did not identify the body of her son which was in a highly decomposed state. In the circumstances, it is contended that the police had got a body of some other person, which was identified as the body of son of Gayatri Devi and implicated the appellant with other co- accused persons. It is further contended that Sh. Gulab Singh (PW-2), before the Court had stated that he was not sure as to who has come to hire the alleged vehicle and therefore, even his deposition could not be relied on. The applicant has also contended that pursuant to disclosure statement, nothing incriminating was recovered and therefore, it is a good case for suspension of sentence and for enlarging him on bail. The Sessions Court has held that it has been established that on 5th November, 2002, the deceased was abducted by Sanjay Singh Rathi, Jayant, Yashpal @ Satpal (appellant), Gajendri (since deceased) and Devendri @ Sunita with an intent to secretly and wrongfully confine him and he was taken from his house on the pretext that one patient was to be brought from Khurja that very day. It has also been established that when Ajay Kumar did not return and search was made, his vehicle was spotted near village Nehru Pur, Khurja and the dead body of Ajay Kumar was recovered from fields of Village Nangla Sheikhu on 11th November 2002, after he was murdered on 5th November, 2002 subsequent to his abduction from his house. The Sessions Court has also held that the appellant was arrested, who made disclosure of the fact that the mobile phone of Ajay was in possession of Manju Kumar @ Satender and in pursuance of this discovery, Manju Kumar @ Satender was arrested, from whose possession mobile phone of the deceased was recovered. In the circumstances, the plea of the applicant that nothing incriminating was recovered on the

disclosure statement of the appellant, prima facie, is not correct. Culpability of the appellant appears to have been made out and in the circumstances, the appellant is not entitled to contend that prima facie no case is made out against him. The appellant had also filed another application for suspension of his sentence being Crl. MB No. 622/2009, which was not pressed at that stage on 17th July, 2009. In the said application, being Crl No. 622/2009, the appellant had sought suspension of sentence on the ground that on account of long period of incarceration, his family has reached at a penury stage and the appellant has no previous vicious antecedents and he has been convicted falsely. Since the trial of the co-accused was pending, by order dated 17th March, 2010, it has already been ordered that the appeal of the appellant be listed after the Trial of the co-accused is over and, in the circumstances, the appellant is not entitled to contend that his appeal is not likely to be heard in the near future. Perusal of the nominal roll of the appellant also reveals that on 12th August, 2008, though he had undergone 7 years 6 months and 19 days of imprisonment and he had also become entitled for remission of 1 year, 4 months and 25 days, however, he has also been convicted on 18th October, 2007 in FIR 240/2007 under Section-506(1)/509 of IPC, P.S. Anand Vihar to undergo rigorous imprisonment for six months. Two other cases being FIR No. 31/2003 under Section 394/302/201/412 of Indian Penal Code, P.S. Pilkhuwa, Ghaziabad, UP and FIR 213/2002 under Section 302/201/394 of IPC, P.S. Bhojpur, Ghaziabad, UP are pending against the appellant/applicant. In the totality of facts and circumstances, this Court is not inclined to suspend the sentence of the appellant at this stage during the pendency of the present appeal and to enlarge him on bail. Consequently, the application of the applicant for suspension of his sentence and to enlarge him on bail at this stage is dismissed.

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