

1. Som and ors Vs. 1. State of Jandk.;

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Court : Jammu and Kashmir

Decided On : Apr-22-2013

Judge : Hon'ble Mr. Justice Muzaffar Hussain Attar

Appellant : 1. Som and ors

Respondent : 1. State of Jandk.;

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. Cr MA No. 130 OF 2012 AND Cr Appeal No. 92 OF 2012. 1. Som and Ors 2. Bhagwan Singh 3. Kulbir Singh and Anr Petitioners 1. State of J&K.

2. State and Anr 3. State and Anr Respondent !Mr. P.N.Raina, Sr. Advocate with J.A.Hamal, Adv, in Cr. Appeal No. 92/2012 Mr. Sudarshan Sharma, Advocate in Cr. Appeal No. 95/2012 Mr. Jatinder Choudhary, Advocate, in Cr. Appeal No. 103/2012 ^Ms. Z.S. Wattali, Dy.A.G, for State. Ms. Surinder Kour, Sr. Adv, with Rajiv Gorkha, Advocate, for complainant. Honble Mr. Justice Muzaffar Hussain Attar, Judge Date:

22. 04.2013 :

JUDGMENT

: Cr.M.A. 130/2012 in Cr. Appeal 92/2012 ,c/w Cr.M.A. No. 135/2012 in Cr. Appeal No. 95/2012 Cr. M.A. No. 156/2012 in Cr. Appeal No. 103/2012 (Oral) FIR No. 08/2008 for commission of offences under Sections 307, 451, 147 RPC was

registered at Police Station R.S. Pura against the applicants/appellants in Criminal Appeal No. 103/2012 on 20th January, 2008. The applicants/appellants in Criminal Appeal No. 103/2012 were taken into custody by the Police in the said FIR on 24th January, 2008 and 5th February, 2008 respectively. After the registration of the case and during the investigation, the injured person succumbed to the injuries and accordingly offence under Section 302 RPC was added. The report under Section 173 Cr.P.C. was filed on 23rd March, 2008. The applicants/appellants were charged for having committed offences under Sections 307, 147, 451 RPC. The appellants in Criminal Appeal No. 92/2012 and Cr. Appeal No. 95/2012 were not initially named in the FIR. During the investigation of the case, statement of the complainant was recorded under Section 164-A Cr. P.C. on 22nd March, 2008, in which, the names of the applicants/appellants were also included as alleged perpetrators of crime. Since the challan was filed against the appellants in Criminal Appeal 92/2012 and Criminal Appeal No. 95/2012 as well, they challenged the action of the police by filing Petition under Section 561-A Cr. P.C. No. 45/2008, in which, this Court initially stayed the arrest of the said appellants and petition was ultimately dismissed on 23rd April, 2010. The appellants in Criminal Appeal 92/2012 and Criminal Appeal No. 95/2012, in pursuance to the orders of this Court passed in 561-A Cr.P.C. surrendered before the trial court on 21st May, 2010. Charge was framed against all the accused by the trial court. The appellants in Criminal Appeal No. 92/2012 and Criminal Appeal No. 95/2012 were enlarged on bail by the trial court, which order was called in question before this Court in Criminal Revision Petition No. 38/2010. The order of the trial court was set-aside by this Court, whereafter the appellants in Cr. Appeal No. 92/2012 and Criminal Appeal No. 95/2012 were taken into custody. After the conclusion of the trial, the learned trial court convicted the accused person vide its order dated 9th November, 2012 for having committed offences under Section 304 Part-II, 451, 147 RPC. In terms of order dated 15th November, 2012, the appellants in all the Appeals were ordered to undergo sentence for a period of eight years and fine of Rs 25,000/- was also imposed on the appellants. The appellants have challenged the order of conviction and sentence in the aforementioned appeals. Appellants have also filed Applications seeking suspension of the sentence and their release on bail. Learned counsel for the applicants/appellants submitted that in Criminal

Appeal No. 103/2012, the appellants have been languishing in custody for almost about five years and in other two cases, there are extenuating circumstances available, which warrant for suspension of sentence in respect of appellants. Learned counsel in support of his contention referred to and relied upon the judgement of Honble Supreme Court in case titled Bhagwan Rama Shinde Gosai and Ors. vs. State of Gujrat reported in (1999) 4 SCC, 421 and submitted in view of the law laid down by the Honble Supreme Court, the applicants/appellants are entitled to seek suspension of the sentence from this Court. Learned counsel also submitted that these Appeals may not be considered for final disposal in the near future because of pendency of other cases. Learned counsel submitted that the applicants/appellants will abide by any condition which may be imposed by the Court on them. Mrs. Z.S.Watali, learned Dy.AG, submitted that applicants/appellants have committed heinous offence and since they have been already convicted and sentenced, as such, they have no right to seek suspension of the sentence and grant of bail. Learned counsel submitted that after the applicants/appellants suffered conviction and sentence, their right to seek bail is literally foreclosed at this stage. Learned counsel referred to the Judgments of Honble Supreme Court in case titled Kishori Lal vs. Rupa and Ors reported in (2004) 7 SCC, 638 as also case titled Masood Ali Khan vs. State of Uttar Pradesh and Ors. reported in (2009) 3 SCC , 492. Learned counsel also referred to the Judgement of Honble Supreme Court in case titled Ravikant. S. Patil vs. Sarvabhuma.S. Bagali, reported in (200&) 1 SCC 673. Learned counsel accordingly prayed for dismissal of the applications. Mrs. Surinder Kour, learned Senior Advocate, appeared and made submissions on behalf of the complainant and prayed for dismissal of these Applications. Learned counsel was heard, notwithstanding the fact that she has not filed any application seeking permission of the Court to argue the case. Learned counsel was heard to meet out justice to the parties. One of the foremost human rights is right to life and personal liberty. This right is recognized by our Constitution, and is guaranteed under Article 21. The right to life and personal liberty, however, is not absolute right. A person cannot be deprived of his life and personal liberty except in accordance with the procedure established by law. The situation in the case of a person, who is charged with commission of non- bailable offences, gets materially changed when

he is convicted and sentenced for having committed non-bailable offence. Appeal being continuation of the criminal proceedings, when same is filed before the appellate court by a person convicted and sentenced by the court of competent jurisdiction, then the entire case lays itself bare before the appellate court, which is under statutory obligation to consider all the issues raised and then to record findings either confirming the order of trial court or reversing the same by acquitting convicted and sentenced persons, or pass any other order which would modify the impugned orders. In this case, prima-facie, special circumstances appear warranting for keeping the order of sentence of the applicants/appellants under suspension and to order their release on bail. Initially the case was registered under Section 307 RPC, but during the investigation offence under Section 302 RPC was added, because the person who had sustained the injuries succumbed to them. The trial court, however, convicted the appellants under Section 304 Part-II. The punishment for offence under Section 302 RPC is life imprisonment or death penalty. The maximum punishment prescribed for offence under Section 304 Part-II is 10 years. The applicants/appellants in Cr.M.A. No. 103/2012 as already stated have been arrested in January, 2008 and February, 2008 respectively. They have almost undergone substantial period, for which they have been convicted and sentenced. Besides this the very fact that the trial court has not been satisfied with the commission of offence under Section 302 RPC, having been allegedly committed, also enables this Court to take a view for suspension of the sentence and grant of bail to the applicants. In respect of appellants in Cr. Appeal No. 92/2012 and 95/2012, there is one more factor which weighs in their favour viz. they were not named in the FIR, but on the basis of the statement of the complainant recorded under Section 164-A Cr.P.C. on 22th March, 2008, they were implicated in the case and challan against them was filed on the very next day i.e. on 23rd March, 2008. The judgments cited at bar by learned counsel for the respondents in Kishori Lals case was in respect of the appellant who was convicted under Section 302 RPC. Similarly in Masood Ali Khans, the accused was convicted under Section 302 RPC. These judgments have no relevance to the facts of this case as in this case, the appellants have been convicted for having committed offence under Section 304 Part-II RPC to undergo eight years imprisonment. The decision in Ravikant S. Patils case is also

distinguishable as in that case it was conviction which was suspended by the Court. In view of the aforementioned discussions, the applications are allowed. The order of sentence dated 15th November, 2012 is suspended and applicants/appellants in all Appeals are ordered to be enlarged on bail on the following conditions:- a. They will furnish bail bonds and surety bonds in the amount of Rs. 20,000/- each to the satisfaction of Registrar Judicial of this Court. b. They will undertake to remain present on every date of hearing before this Court. c. They will not leave territorial jurisdiction of Jammu Division without seeking prior permission from the Court. (Muzaffar Hussain Attar) Judge JAMMU April 22, 2013 Shamim Ahmad

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