

SHARIAT APPELLATE BENCH OF HIGH COURT

Crim. Misc. Application No. 26 /2022.

Date of institution 03.06.2022.

Date of Decision 27.06.2022.

Muhammad Shafique Khan S/o Abdul Hameed, caste Sudhan R/o Ali Sojal at present confined in Rawalakot Jail.

(Applicant)

Versus

1. The State.
2. Abdul Rauf S/o Muhammad Aseel, caste Sudhan R/o Ali Sojal, Tehsil Rawalakot.

(Non-applicants/Respondents)

APPLICATION UNDER SECTION 426,Cr.P.C

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Sardar Muhammad Suleman Khan, Advocate for the applicant.

Nemo for respondents.

ORDER:

Above titled application has been filed under section 426, Cr.P.C for suspension of sentence/ order passed by District Court of Criminal Jurisdiction Poonch-Rawalakot dated 27.05.2022.

I. FACTS AND THE ENSUING PROCEEDINGS:-

Challan under section 173,Cr.P.C, in offences under Sections 324/337 F(i) F(iii) APC and 15(2A) of Azad Jammu & Kashmir Arms and Ammunition Act, 2016, was presented by the Police before Additional Tehsil Court of Criminal Jurisdiction Poonch Rawalakot (Court No.II) on 16.09.2019 against the

accused/applicant, herein. The accused/applicant was examined under Section **242,Cr.P.C** on 10.09.2020, who pleaded not guilty and claimed trial, whereupon the prosecution was ordered to lead evidence. The prosecution produced 15 witnesses out of 17 P.Ws. and got recorded their statements before the trial Court. Thereafter accused-applicant was examined under Section **342,Cr.P.C** on 13.09.2021 and accused/convicted-applicant once again negated the factum of allegation and also refused to produce evidence in his defence as well refused to take oath. The learned trial Court after hearing arguments of the learned counsel for the parties vide its Judgment dated 07.10.2021 awarded the punishment of Daman amounting Rs.20,000/- under section 337 F(i) APC and simple imprisonment for 1 year, he was also awarded punishment of Daman Rs.30,000/- alongwith simple imprisonment for 3 years under section 337 F(iii) APC, he was given sentence of 5 years simple imprisonment alongwith fine of Rs.10,000/- under section 324,APC and he was also given the punishment of two years simple imprisonment and 10,000/- rupees of fine and in case of none payment of fine he shall suffer one month each simple imprisonment in the above two mentioned offences and benefit of section 382-B,Cr.P.C was also awarded to the convict/applicant-Muhammad Shafique. Against the aforesaid judgment, the convict applicant/appellant filed an

appeal before learned District Court of Criminal Jurisdiction Poonch-Rawalakot on 02.11.2021 and cross appeal was also filed on behalf of complainant for enhancement of the sentences on 16.11.2021. Both the appeal were clubbed up and decided through the judgment dated 27.05.2022, wherein the learned District Court of Criminal Jurisdiction Poonch-Rawalakot vide impugned judgment dated 27.05.2022 maintained the judgment of trial Court, except the offence under section 337-N2 in this regard, the learned District Court of Criminal Jurisdiction Rawalakot did not confirm the resolution of the trial court and observed that the same is not applicable in this case.

II. PROCEEDINGS BEFORE THIS COURT:-

Feeling aggrieved from the order of District Court of Criminal Jurisdiction Rawalakot, convict-applicant/appellant preferred an appeal alongwith application for suspension of sentence under **section 426,Cr.P.C** before this Court.

Arguments on behalf of learned counsel for the applicant has been heard on the titled application. Record perused.

III. APPLICANT'S SUBMISSIONS:-

Sardar Muhammad Suleman Khan, the learned counsel for the applicant/appellant contended that the impugned judgment has been passed against the law and facts which is

liable to be set-aside. He further contended that the learned trial Court has wrongly passed the sentence which was upheld by the 1st Appellate Court. Both the Courts below fell in grave error while passing the orders. He zealously argued that maximum punishment of 5 years simple imprisonment has been awarded to the accused-applicant alongwith punishment of maximum zaman of Rs.30,000/-, and benefit of section 382-B,Cr.P.C was also extended in favour of applicant, whereas the accused-applicant has already suffered the imprisonment of more than 1 year (15 months) after decision of conviction. He further argued that the evidence produced by the prosecutions seems to be contradictory and there are bright chances of acquittal of the convict-accused/applicant, therefore, by suspending the sentence awarded by the trial Court, the accused-applicant may be released on bail.

IV. DETERMINATION BY THIS COURT:-

A perusal of record shows that convict-applicant (appellant) herein was awarded the punishment of Daman amounting Rs.20,000/- under section 337 F(i) APC and simple imprisonment for 1 year, he was also awarded punishment of zaman Rs.30,000/- alongwith simple imprisonment for 3 years under section 337 F(iii) APC, he was given sentence of 5 years simple imprisonment alongwith fine of Rs.10,000/- under section

324,APC and he was also given the punishment of two years simple imprisonment and 10,000/- rupees of fine, in case of none payment of fine, he shall also suffer one month each simple imprisonment in the above two mentioned offences and benefit of section 382-B,Cr.P.C was also awarded to the convict/applicant-Muhammad Shafique by the trial Court through its decision dated 07.10.2021 and this decision of conviction was also maintained by the learned District Court of Criminal Jurisdiction Poonch-Rawalakot vide impugned judgment dated 27.05.2022.

I am cognizant of the fact that there must be some strong and cogent reasons for ascertaining that the conviction will not sustain. No doubt it is the entire discretion of the Court to suspend the sentence, but the discretion has to be exercised judiciously by considering the relevant facts and circumstances of the case without entering into or commenting upon the merits of the case.

It may be mentioned here that the accused-applicant is behind the bars and almost suffered 1 year imprisonment after sentence by the trial Court he is detained in Jail, whereas, benefit of section 382-B,Cr.P.C was also extended by the trial Court. It may be mentioned here that quantum of sentence of five years awarded to accused fell within compass of short sentence and

accused having enlarged on bail had neither misused concession of bail nor had he made any attempt to tamper with prosecution witnesses, thus, under the circumstances court can exercise its powers to enlarge the accused on bail. Since the appeal is pending adjudication, so keeping in view the peculiar facts and circumstances of the case and quantum of sentence, it will be in the interest of justice to suspend the sentence till disposal of appeal. At this juncture, I would hold that life and liberty of a person is precious, all presumptions are positively to be taken in favour of liberty rather than Detention and Cages but keeping in view the scales of justice and contours of law.

Quantum of sentence of 5 years awarded to accused fell within compass and parameters of short sentence, only misuse of concession of bail or any attempt to tamper with the evidence of prosecution are eventualities to withhold this concession. In this regard ready reference is **2017 YLR Note 241 (page 174)**.

Provision under section 426 (1) Cr.P.C are analogous to the one contained in section 497 Cr.P.C. In both the cases the sentence or detention is to be suspended pending hearing of appeal/trial and the convict is to be released on bail with only difference that in the former case the person is a convict who has been already found guilty while in the latter case accused has to

face trial and is still to be proved guilty. Only tentative birds' eye view is permissible at this stage. Dicta laid down by the Hon'ble Supreme Court of Azad Jammu & Kashmir in **PLD 2010 SC AJK 29** is beacon of light in this regard.

In backdrop of what has been discussed above, I accept this application and suspend the sentences awarded by the courts below, till disposal of appeal subjudice before this Court. The applicant shall be released forthwith on bail furnishing bail bond in the sum of Rs.400000/- (Four Lac) with one surety in the like amount to the satisfaction of any Magistrate 1st Class Rawalakot or trial Court, if not required in any other case or offence.

The application stands disposed of accordingly. A copy of this order shall be annexed with original appeal. The original appeal shall come up for arguments on _____.

Muzaffarabad,
27.06.2022.

-Sd-
JUDGE

Note:-

Order/decision is written and duly signed. The Deputy Registrar High Court Circuit Bench Rawalakot is directed to announce the order/decision, after issuing notices to the parties or their counsel.

-Sd-
JUDGE