
(2021) 01 RAJ CK 0164

Rajasthan High Court

Case No: Criminal Miscellaneous Suspension Of Sentence Application (Appeal) No. 1021 ,
1238Of 2019

Ramdeen And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: Jan. 20, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 389
- Indian Penal Code, 1860 - Section 34, 201, 302, 365, 394, 397
- Evidence Act, 1872 - Section 27

Hon'ble Judges: Sandeep Mehta, J; Devendra Kachhawaha, J

Bench: Division Bench

Advocate: Vinod Sharma, Deepak Menaria, Farzand Ali, Anil Joshi

Final Decision: Allowed

Judgement

The instant applications for suspension of sentences under Section 389 CrPC have been preferred on behalf of the appellant-applicants (1) Ramdeen

S/o Shrawan and (2) Salam @ Chotiya S/o Yusuf Khan, who have been convicted and sentenced for the offences under Sections 365/34, 394/34,

397/34, 302/34 and 201/34 IPC vide the judgment dated 16.02.2019 passed by the learned Additional Sessions Judge No.2, Jodhpur Metropolitan in

Sessions Case No.5/2014.

Learned Public Prosecutor has chosen not to file reply to the applications for suspension of sentences and proposed to argue the matter orally.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel Mr. Vinod Sharma, representing the appellant-applicant Ramdeen, urges that there is no evidence worth the name on the record of

the case so as to connect him with the crime of murdering Yunus Khan @ Lala. He drew the court's attention to the missing person report (Ex.P/18),

which came to be filed by Jameel Khan, brother of the deceased at the Police Station Pratap Nagar on 04.02.2014, in which, there is an allegation that

his brother Yunus Khan had been engaged by two boys for taking them in his Tavera on 30.01.2014 and thereafter, he did not return back. Mr.

Sharma urges that the FIR (Ex.P/24) came to be lodged as late as on 22.03.2014 by the wife of the deceased, in which, the appellant-applicant has

been named as one of the persons, who had engaged Yunus with the Tavera vehicle. He urges that if at all the identity of the persons was known

when the deceased went away with his car, then their names would have been mentioned in the missing person report itself. He further submits that

the factum of recovery of the dead body of Yunus from a dry well cannot be attributed to the appellant-applicant Ramdeen because the information

under Section 27 of the Evidence Act prior in point of time for disclosure of the place where the dead body was concealed, was written at the

instance of co-accused Salam vide memo Ex.P/69 dated 11.06.2014 at 09.00 p.m., whereas the appellant-applicant Ramdeen's information under

Section 27 of the Evidence Act was recorded vide memo Ex.P/70 dated 12.06.2014 at 08.45 a.m. He, thus, urges that the information which is prior in

time would be admissible and later information has to be discarded. On these grounds, he implored the court to accept the application for suspension of

sentences preferred on behalf of the appellant- applicant Ramdeen.

Learned counsel Mr. Deepak Menaria, representing the appellant-applicant, Salam @ Chotiya S/o Yusuf Khan, also vehemently and fervently

contended that there is no evidence worth the name to connect the appellant-applicant with the crime. Since the informations under Section 27 of the

Evidence Act were given by both the accused leading to the discovery of the dead body, it cannot be held with any degree of certainty as to in

furtherance of which information, the recovery was effected. He, thus, urges that the appellant-applicant Salam also deserves indulgence of bail

during the pendency of the appeal.

Per contra, learned Public Prosecutor has vehemently and fervently opposed the submissions advanced by the appellants' counsel and contends that

the accused appellants were arrested in connection with the recovery of the Tavera vehicle and the skeleton of Yunus Khan was recovered from a

dry well in furtherance of the informations provided by both the accused to the police officers. He further submits that the accused appellants have

made voluntary disclosures regarding the murder and recoveries have been effected from them. Thus, they do not deserve indulgence of bail during

the pendency of the appeal.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the record. Suffice

it to say that the star prosecution witnesses Jameel Khan (P.W.4), Mohd. Akram (P.W.13) and Liyakat (P.W.14) all claim to be knowing the

appellants from before, but still, in the missing person report (Ex.P/18) dated 04.02.2014, no reference was made to the names of the persons, who

had engaged Yunus with his vehicle on the date of his alleged disappearance, i.e. 30.01.2014. The accused appellants were arrested after more than

four and half months of the incident. The information prior in point of time leading to discovery of the skeleton of Yunus is attributed to the accused

Salam, whereas the information of Ramdeen was recorded subsequently.

In this background, this court is of the opinion that the appellant-applicant Ramdeen deserves indulgence of bail during the pendency of the appeal,

whereas it is not a fit case to grant bail to the appellant-applicant Salam @ Chotiya.

Accordingly, the application for suspension of sentences filed under Section 389 Cr.P.C. filed on behalf of the appellant-applicant Salam @ Chotiya

S/o Yusuf Khan is dismissed. However, the application for suspension of sentences preferred on behalf of the appellant-applicant Ramdeen S/o

Shrawan is allowed and it is ordered that the sentences passed by the learned Additional Sessions Judge No.2, Jodhpur Metropolitan vide judgment

dated 16.02.2019 in Sessions Case No.5/2014 against the appellant-applicant Ramdeen S/o Shrawan shall remain suspended till final disposal of the

aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/-

each to the satisfaction of the learned trial Judge for his appearance in this court on 22.02.2021 and whenever ordered to do so till the disposal of the

appeal on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.

2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the

High Court.

3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case

related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready

reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case

the said accused applicant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of

bail.