

(2016) 08 P&amp;H CK 0319

**High Court Of Punjab And Haryana At Chandigarh****Case No:** CRM No. 21169 of 2016 in CRA-D No. 1582-DB of 2015

Amit @ Bittu

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Aug. 9, 2016**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Penal Code, 1860 (IPC) - Section 212, Section 302, Section 34

**Citation:** (2017) 1 RCRCriminal 601**Hon'ble Judges:** Mahesh Grover and Shekher Dhawan, JJ.**Bench:** Division Bench**Advocate:** Vivek Khatri, Advocate,, for the Applicant; Ms. Kirti Singh, DAG Haryana, for the Respondent**Final Decision:** Allowed

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**Judgement**

1. This is an application under Section 389 Cr.P.C. praying for suspension of sentence of the applicant-appellant, namely Amit alias Bittu, who has been convicted and sentenced to undergo life imprisonment in a case registered vide FIR No. 1141 dated 20.10.2013 under Sections 302/34/212 IPC at Police Station Sadar, Hisar.

2. According to the prosecution version, recorded in the FIR, the complainant had seen certain persons beating up the deceased. Three names were mentioned while two other persons were referred to as "unknown persons". The deceased was taken to the hospital where he succumbed to his injuries.

3. Learned counsel for the applicant-appellant contends that in the initial version, name of the applicant did not appear and subsequently an eye-witness mentioned his name, which would raise the debatable issues of the identity and involvement of the present applicant in the commission of offence. Apart from this, it is contended that there is no direct evidence to link the applicant with the commission of offence.

It is also stated that the applicant has undergone two years, nine months & two days out of total substantive sentence of life imprisonment.

4. The prayer is opposed by learned counsel for the respondent-State. But the period of custody is not disputed.

5. After hearing learned counsel for the parties, we are of the opinion that the presence, identity and involvement of the applicant in the given set of facts would raise debatable issues which are to be determined in the appeal, which we would not dilate any further, lest it prejudices the outcome of the appeal. Suffice it to say that looking into the facts of the case in totality and contradiction of sorts between the initial versions and the one given subsequently coupled with the factum of applicant having undergone two years, nine months & two days out of total substantive sentence of life imprisonment, would persuade us to grant the concession of suspension of sentence to the applicant. Thus, we would, without commenting on the merits of the case, deem it appropriate to direct the suspension of sentence of the applicant-appellant, namely Amit alias Bittu during the pendency of the appeal on his furnishing bail/surety bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Hisar.

6. Criminal Misc. Application stands allowed.

7. Nothing said here-in-above shall be construed to be an expression of opinion on the merits of the case.