

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Crl. Rev. Appl. No. 162 of 2015

Date	Order with signature of Judge
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1. For hearing of case
2. For hearing of M.A. No.10228/15

29-07-2016

Mr. Khawaja Muhammad Azeem, Advocate for Applicant

Mr. Abdullah Rajput, Learned D.P.G.

This is an application under Section 426 read with Section 561-A Cr. P.C. for suspension of operation of both the impugned Judgments and release of the Applicant/Accused on bail during pendency of this revision application.

I have heard the learned counsel for the applicant and also learned DPG and perused the record.

Learned counsel for the applicant contended that the applicant has been convicted under Section 265-H (ii), Cr. P.C. for committing offense punishable under Section 23 (i) (a) of Sindh Arms Act, 2013 by the Learned Assistant Sessions Judge, Sujawal, in Session Case No.10 of 2015 for keeping in possession unlicensed repeater of black colour bearing No. 11204125 with two live rounds of red colour and sentenced him to undergo rigorous imprisonment (RI) for four years and pay fine of Rs. 10,000/- and in case of default in payment of fine to undergo SI for six months more with benefit of Section 382-B Cr. P.C. He further contended that the appeal of the Applicant is also dismissed by impugned Judgment dated 25.11.2015 by the learned 1st Additional Sessions Judge, Thatta. He further contended that his repeater was with license. He further contended that the Applicant is in custody since 25.11.2015 and the chance of this Revision Application being heard in near future is not possible due to rush of the work. He further contended that in cases where the sentence imposed is a short one, the Superior Courts have suspended the sentence under Section 426 Cr. P.C. In support of his contention, he relied upon the following case law:-

1. Abdul Hameed Vs. Muhammad Abdullah and others (1999 SCMR 2589)
2. Nazeer Ali alias Nazeer Vs. The State (2011 YLR (Karachi) 402)

3. Ali Murad Vs. The State (SBLR 2011 Sindh 228)
4. Habib Ahmed Vs. The State (2016 YLR (Sindh) 187)

Learned DPG has strongly opposed this application by arguing on factual position but has not cited any case-law, wherein, in the present circumstances, this kind of application was rejected.

I have carefully gone through all the case law referred to by the learned counsel for the applicant.

It has been held by the Apex Court in the case of Abdul Hameed Vs. Muhammad Abdullah and others reported in 1999 SCMR 2589 that:-

“Since sentence awarded to the petitioner was short as it was enhanced by the learned Additional Sessions Judge from three years to five years, it was a fit case in which the learned Judge in Chambers should have exercised the discretion in favour of the convict.”

This principle of law was followed by our own High Court in the following reported Judgments:-

1. Nazeer Ali alias Nazeer Vs. The State (2011 YLR (Karachi) 402)
2. Ali Murad Vs. The State (SBLR 2011 Sindh 228)
3. Habib Ahmed Vs. The State (2016 YLR (Sindh) 187)

I myself have already followed this principle of law in Criminal appeal No. 237 of 2015 in my order dated 27.07.2016.

In view of the above discussion, I allow this application and suspend the sentence of the applicant and release him on bail subject to furnishing solvent surety in the sum of Rs.50,000/- and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

J U D G E