

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Cr. Appeal No. 215 of 2016

Date	Order with signature of Judge
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For hearing of M.A. No. 4792/2016 (U/S. 426 Cr. P.C.) (a/w/(1) R & P)

26-07-2016

Mr. Farhan Zia Awan, Advocate for Appellant

Ms. Seema Zaidi, Learned A.P.G.

Alongwith this appeal, the appellant has also filed an application under Section 426 Cr. P.C. for suspension of sentence on the ground that the Trial Court has sentenced him for the period of five years and as such the appellant is entitled for bail during pendency of this appeal.

I have heard the learned counsel for the appellant and also learned APG and perused the record.

Learned counsel for the appellant contended that the appellant has been convicted under Section 265-H (ii), Cr. P.C. by the Learned II Additional Sessions Judge, Karachi Central, in Session Case No.1357 of 2014, in Crime No. 249/2014 registered at Police Station Sharifabad, offence under Section 24 of Sindh Arms Act, 2013 for keeping in possession of unlicensed pistol of 30 bore alongwith magazine containing one live bullet in magazine and one live bullet in chamber and sentenced him to suffer R. I. for five years and to pay fine of Rs.10,000/- and in case of default in payment of fine, to suffer S.I. for one month. He further contended that this appeal was admitted by this Court vide order dated 23.05.2016 and office was directed to prepare the paper book. He further contended that the appellant is in custody since 28.03.2016 and the chance of this appeal 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 APG 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 appellant. 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 in all the above referred cases by our own High Court. Accordingly, I am bound to follow this principle of law.

In view of the above discussion, I allow this application and suspend the sentence of the appellant 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 Deputy Registrar of this Court.

J U D G E