

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-128 of 2016

---

DATE

ORDER WITH SIGNATURE OF JUDGE

---

1. For hearing of main case.
2. For hearing of application u/s 426 Cr.P.C. (M.A. No.10578 of 2016).

28.02.2019.

Ms. Nasira Shaikh, Advocate for the appellants.

Mr. Shahid Ahmed Shaikh, D.P.G.

=

**Zulfiqar Ahmad Khan, J.** Through application made u/s 426 Cr.P.C. appellant

Ahmed seeks his release on bail through suspending the sentence awarded to him vide judgment dated 16.07.2016 passed by the learned Ist. Additional Sessions Judge, Badin in Sessions Case No.169 of 2013 (State v. Abdul Razzaq and others), emanating from Crime No.29/2013 of P.S Kario Ganhwar, lodged by complainant Muhammad Yousif under sections 302, 324, 504, 34 PPC, where he alongwith co-accused/appellants was convicted under section 324 read with section 34 PPC for attempting to commit murder of PW Ali Gul and sentenced to suffer R.I for 07 years and was also directed to pay fine of Rs.10,000/- in terms of section 544-A Cr.P.C. He was also convicted under section 337-F(i) read with section 34 PPC and sentenced to suffer 01 year as Ta'zir and to pay Daman of Rs.5000/- to P.W Ali Gul. Both the sentences were ordered to run concurrently.

2. Learned counsel for the appellants while arguing the application under section 426 Cr.P.C, referred to jail roll received from the Superintendent Central Jail dated 25.02.2019, which reflects that appellant Ahmed S/o Soomar Chang out of the sentences awarded to him through the impugned judgment has already served out 05 years, 01 month and 20 days, whereas unexpired portion with compensation and Daman is only 06 months and 28 days. She also submits that the appellant is an old and infirm person being 65 years of age and his present health condition is very poor; that appellant has served out major portion of his sentence; that appellant has good case on merits, but, due to heavy backlog the hearing of appeal in near future is not in sight; however, whenever the appeal

would proceed on merits and in case the appellant would succeed, then his detention behind the bar will not be measured in terms of money. Learned counsel prays that while considering the above grounds, impugned sentence awarded to the appellant Ahmed may be suspended on humanitarian ground.

3. Learned DPG graciously conceded to the submission made by the learned appellants.

4. I have heard the counsel for the appellant as well as learned DPG and perused material available on record. The appellant, per counsel, is about 65 years of age and behind bar since his arrest, tentatively makes it hard to maintain this conviction based on the evidence furnished by the prosecution thus the question that whether conviction and sentence of the appellant can be maintained on the same evidence, will require deeper appreciation to be given at the time of hearing of the main appeal. This appeal is pending before this Court since 30.07.2016 and due to heavy backlog, hearing of the same in near future is not in sight. The appellant was awarded R.I. for 07 years. Per jail-roll, he has served out major portion of the sentence and there remain only 06 months and 28 years as unexpired portion. Per counsel, the appellant is passing ailing life and his further detention will cause further ailment. The learned DPG while conceding the submissions made by learned counsel for the appellant also raised no objection if the sentence awarded to the appellant is suspended.

5. In the above circumstances, the execution of sentence awarded by the learned trial court to the appellant Ahmed S/o Soomar Chang is hereby suspended and the appellant is admitted to bail upon his furnishing solvent surety in the sum of Rs.10,000/- (Rupees Thousand) only and P.R. bond in the like amount to the satisfaction of the Additional Registrar of this Court.

6. M.A. No. 10578/2016 stands disposed of in above terms.

Let the matter come up for regular hearing on 18.03.2019.

JUDGE

S