

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.390 of 2019

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

1. For hearing of case.
2. For orders on M.A No.6350/2019.

10.06.2020

M/s. Mehmood Akhtar Qureshi and Jamshed Iqbal, Advocates
for the appellants.
Ms. Rahat Ahsan, Additional P.G.
None present for the complainant.

NAZAR AKBAR, J.- The record shows that the complainant was served and he was present in Court on **06.8.2019** and requested for time to engage a counsel and after two dates on **07.10.2019** Mr. Anwar Ali Shaikh, Advocate filed power on behalf of the complainant. However, Mr. Anwar Ali Shaikh, Advocate for complainant after remaining absent for several dates was present on **06.5.2020** when by his consent these appeals were adjourned for **13.05.2020** but again on **13.5.2020** he was absent. Today again learned counsel for the complainant is again absent without intimation. Be that as it may, the counsel for other appellants in connected Criminal Appeals No.374/2019 and 395/2019 are reported to be busy in some other bench. The two appeals are, therefore, adjourned.

2. The appellants in the instant Criminal Appeal No.390/2019 are two women namely Mst. Samina D/O Muhammad Iqbal and Mst. Safia Shabbir D/O Muhammad Shabbir and their counsel insists that application under Section 426 Cr.P.C may be heard and decided.

3. Learned counsel for the appellants has contended that the two ladies have always been on bail before the trial Court during

pendency of the case and they are now behind the bar for almost one year, though there is hardly anything worth mention against them for their conviction and hearing of main case will obviously take time to be heard with other appeals. He has advanced the following contentions.

- (i) Nothing from the alleged robbed articles has been recovered from these appellants;
- (ii) Though it is case of the prosecution that the appellants were present on the spot at the time of incident but they were arrested on **12.10.2012** after four days of incident dated **08.10.2012**; But prosecution has not made any identification parade of the present appellants though there has been an identification parade of other three accused persons;
- (iii) There is no allegation of direct role of appellants in committing offence of murder;
- (iv) As stated earlier, the two ladies have been on bail during the trial;
- (v) The criteria for suspension of order in the cases of conviction is identical to the criteria for grant of bail during the trial;
- (vi) The learned counsel for the appellants has relied on the case reported as Raja Shamshad Hussain vs. Gulzar Akhtar and others (**PLD2 2007 SC 564**) and emphasized that since the appellants were already on bail during pendency of this case, they are entitled for grant of bail pending this appeal which obviously will take lot of time.

4. In rebuttal, learned Additional P.G has vehemently opposed the grant of bail to the appellants. She has only relied on **Section 34 PPC** for opposing the bail. She has, however, not been able to advance any reason for the failure of the prosecution to include the present appellants in the identification parade when the other

accused were identified by the complainant in the identification parade. She has pointed out from the record that there has been a request for holding identification parade for all the accused.

5. I have considered the arguments advanced by the learned counsel for the parties. Even otherwise, the case of women is always distinguishable for the purpose of bail in terms of first proviso to **Section 497 Cr.P.C.** The criteria for orders on an application under Section 426 Cr.P.C laid down by the Hon'ble Supreme Court in the case-law (supra) relied upon by the learned counsel for the appellants is reproduced below:-

Section 426(1) though has made essential the recording of reasons in case of suspension of sentence but has not prescribed any guideline or the manner in which such a discretion is to be exercised as how and what would be the criteria for the recording of the reasons. Since these provisions, under section 426(1) are analogous to the one contained in section 497, Cr.P.C. as in both the cases the sentence or detention is to be suspended pending hearing of the appeal/trial and the convict or the detenue is to be released on bail with only difference that in the former case the person is a convict one, already found guilty, while in the latter he has been charged only and to face trial and is still to be proved guilty. It would be appropriate, in the absence of any guideline, to follow the one provided under section 497, Cr.P.C. on the principle that where a Statute lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the court as held in the case of *Maqsood v. Ali Muhammad* 1971 SCMR 657 and which principle, as later on, was reaffirmed by this Court in the case of *Peer Mukaram-ul-Haq v. National Accountability Bureau NAB through Chairman and others* 2006 SCMR 1225. In section 497, Cr.P.C., the existence and non-existence of the reasonable grounds for believing that the person is guilty of the offence and the scope of further inquiry are the criteria/hallmarks and for arriving at such conclusion the tentative assessment and not the minute or detailed assessment of the evidence has been made permissible, the principle laid down by this Court and reaffirming repeatedly. Similarly, the same guidelines have been laid down by the superior

Courts that in case of suspension of sentence, only the tentative assessment of the material available evidence and of the judgments has been made permissible and the detailed appraisal of evidence was held to be avoided as held by this Court in the cases of Allah Ditta Khan (supra) and Farhat Azeem (supra). However, the principles laid down by this Court in the aforesaid judgments qua following the guidelines prescribed under section 497, Cr.P.C. while deciding application under section 426(1), Cr.P.C. but without being controlled by the aforesaid section i.e., 497, Cr.P.C. as held in the case of The State v. Shah Sawar 1969 SCMR 151 and such powers i.e., the suspension of sentences and grant of bail under section 426, Cr.P.C. are not wider than the power to release a person on bail under section 497, Cr.P.C. as held in the case of Bahar Khan v. The State 1969 SCMR 81 but rather narrower.

6. In my attentive view at least it cannot be prima-facie accepted that the role of women and the three men was identical. It may be noted and the record shows and also confirmed by the prosecution that nothing has been recovered from the ladies/ appellants and whatever has been recovered is recovered from the three other accused/appellants who have filed separate Criminal Appeals No.374 and 395 of 2019.

7. In view of the above, the application (M.A No.6350/2019) is allowed and the appellants Mst. Samina D/O Muhammad Iqbal and Mst. Safia Shabbir D/O Muhammad Shabbir are admitted to bail pending this appeal subject to furnishing solvent surety in the sum of **Rs.100,000/-** (Rupees One Hundred Thousand) each and P.R Bond in the like amount to the satisfaction of Nazir of this Court.

8. Adjourned to a date in office for hearing of main appeal. To come up along with Cr. Appeals No.374 and 395 of 2019.

JUDGE

Ayaz Gul