

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No.S- 47 of 2021

Crl. Appeal No. S- 50 of 2021

- 1.For hearing of Main Case.
- 2.For hearing of MA 3445/2021.

Mr. Wazeer Ali Ghoto Advocate for Appellants in Crl. Appeal No.S-47/2021
Mr. Shabbir Ali Bozdar Advocate for Appellant in Crl. Appeal No.S-50/2021
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **19-07-2021**

ORDER

MUHAMMAD SALEEM JESSAR J. By this common order, I intend to dispose of listed M.As No.-3445 of 2021 and 3531 of 2021 being applications under Section 426 CrPC, as both arise out of judgment dated 21.06.2021, penned down by III-Additional Sessions Judge, Mirpur Mathelo in Sessions Case No.283 of 2020 re: State-Versus Muhammad Hanif and others.

2. Trial Court after conclusion of trial and assessment of evidence found the appellants guilty of the charges, therefore, convicted and sentenced them under offence punishable under Section 402 PPC to undergo RI for 03-years each with fine of Rs.2000/- each. In case of default in making payment thereof, each accused shall suffer S.I for 05-days more. Appellants/convicts were also convicted and sentenced under Section 324 PPC to undergo for a period of R.I 05-years with fine of Rs.4000/- each and in case of default in making payment thereof, appellants have to suffer S.I for one week more. In addition, all the

appellants have also been convicted and sentenced under Section 353 read with Section 148 & 149 PPC to undergo for a period of one year R.I each for each offence with benefit of Section 382-B Cr.P.C.

3. Through listed applications, appellants seek suspension of their sentences vis-à-vis impugned judgment dated 21.06.2021 and their release on bail during pendency of main appeals.

4. Learned counsel appearing on behalf of the appellants submit that on merits appellants have good case for acquittal, as according to them none from complainant party had sustained any injury or even scratch on their part at the hands of appellants at the time of alleged encounter. They further submit that all the PWs are from police department, therefore, there are brilliant chances for success of their appeal(s). Learned counsel further adds that appeals are fresh one besides sentences awarded to them are short one. They however submit that looking to the heavy pendency/backlog of the cases upon board of this Bench, appeals would take sufficient time, therefore, by granting listed applications, operation of impugned judgment may be suspended and they may be enlarged on bail. In support of their contention, they have placed reliance upon unreported order dated 22.10.2018, vide CrI. Appeal No.S-90 of 2018 re: Zaheer Ahmed v. The State and order dated 29.05.2018 vie CrI. Jail Appeal No.D-49 of 2018 re: Waseem and others v. The State, Abdul Hameed v. Muhammad Abdullah and others **(1999 SCMR 2589)**, Nazeer Ahmed v. The State **(2005 PCr.LJ 657)**.

5. On the other hand, learned Additional P.G for the State opposes listed applications on the ground that appellants are nominated in the FIR, besides they assaulted upon the police party whilst they were discharging their lawful duties. He further submits that short number of witnesses has been given, therefore, it will be appropriate to proceed with appeals instead of listed applications. He; however, admits that per prosecution case none from police party had sustained any injury or even scratch on their part; however, one of accused Muhammad Haneef had sustained injuries on his leg. He further submits that offensive weapon was also shown to have been recovered from injured accused Muhammad Haneef.

6. In rebuttal, learned counsel for appellants submit that appellants were taken away by the police from their homes and they made demand of huge amount as an illegal gratification, which the accused could not arrange, therefore, complainant of this case had become annoyed and by taking summersault had shown fake police encounter by causing wilful injury to accused Muhammad Hanif at Police Station. Moreover, ingredients for maintaining sections 399 read with Section 402 PPC are lacking in this case.

7. Heard arguments and perused the record. Admittedly, this is a case of encounter in which only one accused had sustained injuries on his leg and none from the police party had sustained any injury or even scratch on their part. As far as application of Section 399 read with Section 402 PPC is concerned, basic ingredients for maintaining these

sections are lacking in this case as the prosecution has not adduced any iota of evidence which may show that the appellants had allegedly committed any offence prior to this occurrence within their jurisdiction of like nature nor such record was produced in evidence to show that the appellants are habitual offenders and are vagabonds of their area. Moreover, quantum of sentences awarded to them is five years which in view of dictum laid down by the Hon'ble Supreme Court in cases of Abdul Hameed (supra) comes within the ambit of short term. Though, the appeals have been admitted for regular hearing in terms of orders dated 01.07.2021 and 28.06.2021, yet R&Ps have not been made available, therefore, paper books have not been prepared by the office. Hence, due to heavy pendency/backlog upon board of this Court, appeals would take sufficient time in their respective turn.

8. In view of above discussion and citations relied upon by learned counsel for the appellants, I am of the opinion that appellants have made-out their case for their release on bail during pendency of main appeals. Consequently, listed applications being M.As No-3445 of 2021 and 3531 of 2021 are hereby allowed. Resultantly, operation of impugned judgment dated 21.06.2021, handed down by learned III-Additional Sessions Judge, Mirpur Mathelo in Sessions Case No.283 of 2020 re: State-Versus Muhammad Hanif and others is hereby suspended till final decision of main appeals. Appellants shall be released on bail subject to their furnishing solvent surety in the sum of

Rs.100,000/-(One Lac) each with P.R bond in the like to the satisfaction of the Additional Registrar of this Court..

9. Office to ensure early preparation of paper book preferably within four weeks' time. Once R&Ps are made available, office shall issue notices to the counsel for appellants and appellants directly aims to deposit required charges for preparation of paper book within one week's time thereof. In case of failure on the part of appellants or their counsel, these appeals shall be listed for non-prosecution. To come up for hearing of main appeals on **06.09.2021**.

J U D G E

Ahmad