

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Appeal No.S-13 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of MA 556/2022.
2. For hearing of main case.

07.03.2022.

Mr. Muhammad Sachal Awan, Advocate for appellant.  
Mr. Nazar Muhammad Memon, Additional P.G.

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This is an application for suspension of sentence filed u/s 426 Cr.P.C. Appellant Muhammad Ayoub was tried by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Badin, for offences under Sections 324, 504, 109 PPC. After regular trial, vide judgment dated 14.01.2022, appellant has been convicted and sentenced as under:-

“i) Accused Muhammad Ayoob son of Khamiso Chandio is convicted under section 324 PPC as he attempted to commit the murder and caused gunshot injuries to Ali Muhammad and minor Sughra so he is sentenced to suffer R.I for three years with fine of Rs.20,000/- (twenty thousand) only. In default of payment of fine he will undergo S.I for the period of three months.

ii) Accused Muhammad Ayoob son of Khamiso Chandio is further convicted for causing injuries to Ali Muhammad as he cause first injury which was Shajjah-i-Khafifah punishable U/S 337-A(i) PPC and he cause injuries 2,3,4 and 5 which were Jurah-Ghayr-Jaifah Badiha U/S 337-F(ii) PPC and he cause injury No.6 which was Jurah-Ghayr-Jaifah Damiyah U/S 337-F(i) PPC, so, he is convicted but he is not previously convicted so he is directed to pay the Daman amount of Rs. 100,000/- ( One lac ) to injured Ali Muhammad. In case of default of payment of the Daman Amount, accused will remain in jail till payment of said amount and if said amount was paid the same will receive by the injurd.

iii) Accused Muhammad Ayoob son of Khamiso Chandio is further convicted for causing injuries to minor Sughra daughter of Muhammad Yousuf as he cause two injuries, which were Jurah-e-Ghayr-Jaifah Mutlahimah punishable U/S 337-F(iii) PC so, he is convicted but he is not previously convicted so he is directed to pay the Daman amount of Rs.50,000/- ( Fifty thousand ) to minor injured Sughra daughter of Muhammad Yousuf. In case of default of payment of the Daman Amount, accused will remain in jail till payment of said amount and if said amount paid the same will receive by the injured or her father or guardian.”

The above sentences were ordered to run concurrently. However, appellant has been extended benefit of Section 382-B Cr.P.C. Appellant has filed this appeal against his conviction and sentence which was admitted for regular hearing vide order dated 28.01.2022. Alongwith appeal, an application under Section 426 Cr.P.C was also filed and notice of such application was issued to Additional P.G as well as complainant.

Learned Advocate for appellant mainly contended that sentence of three (03) years is a short sentence and appellant has already served about 02 months in jail. It is submitted that trial Court has committed several illegalities while conducting the trial. Lastly, it is submitted that appellant was on bail during trial of the case. In support of his submissions, learned Counsel has relied upon the cases of ABDUL HAMEED v. MUHAMMAD ABDULLAH and others (1999 SCMR 2589), NAZEER ALI alias NAZEER v. The STATE (2011 YLR 403) and NASEER SHAH and others v. The STATE (2015 P.Cr.LJ 758).

Learned Additional P.G recorded no objection for suspension of sentence on the ground that sentence of three (03) years is short one, so also in view of the case law relied upon by learned advocate for the appellant.

I am inclined to suspend the sentence of appellant for the reasons that the sentence awarded to appellant by trial Court for three (03) years is a short sentence and hearing of appeal will take sufficient time due to huge pendency of the cases at this circuit court. As per available record, the appellant after judgment dated 14.01.2022 has served his sentence for about 02 months. It is also argued that appellant was on bail during trial. In the case of ABDUL HAMEED v. MUHAMMAD ABDULLAH (1999 SCMR 2589) it is held as under:-

“4. On the other hand, Mr. S.M. Masud, learned Advocate Supreme Court, for the petitioner, has urged that the learned Additional Sessions Judge without putting to the petitioner the notice as to the enhancement of the sentence and without hearing the arguments, enhanced the imprisonment for three years to five years and the amount of fine from Rs.5,000 to Rs.10,000. Without going to the question, whether any notice was issued for the enhancement by the learned Additional Sessions Judge (as according to the State counsel such a notice was issued). We are inclined to hold that since the sentence was short and as the sentence was enhanced by the learned Additional Sessions Judge from three years to five years, it was fit case in which the learned

Judge in Chambers P` should have exercised the discretion in favour of the convict. We convert the above petition into appeal and admit the petitioner to bail in the sum of Rs.2,00,000 (two lacs) with one surety in the like amount to the satisfaction of the trial Court.”

Keeping in view the above case law relied upon by learned Counsel, as the sentence of 03 years is short sentence. Accordingly, the sentence awarded to the appellant vide judgment dated 14.01.2022 is suspended during pendency of appeal. Appellant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand Only) and P.R Bond in the like amount to the satisfaction of the Additional Registrar of this Court. It is ordered that this appeal shall be heard on 28.03.2022.

M.A. No.556 of 2022 stands disposed of.

JUDGE

Tufail