

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

**Criminal Misc. Application No. D- 01 of 2024**

Present:

*Justice Zafar Ahmed Rajput*

*Justice Amjad Ali Bohio*

**Applicants** : 1. Janan @ Janu s/o Kouro Chandio  
2. Aijaz s/o Janan @ Janu Chandio  
3. Ali Hasan s/o Gullan Chandio, through  
M/s. Meer Ahmed Mangrio & Irfan Ali  
Rahujo, Advocates

**Respondent** : The State, through Mr. Nazar Muhammad  
Memon, Addl. Prosecutor General, Sindh  
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**Dates of Hearing** : 13.08.2024 & 29.08.2024

**Date of Order** : 29.08.2024  
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**ORDER**

ZAFAR AHMED RAJPUT, J.- Through instant CrI. Misc. Application under section 561-A, Cr. P.C, applicants (1) Janan @ Janu s/o Kouro Chandio, (2) Aijaz s/o Janan @ Janu Chandio and (3) Ali Hasan s/o Gullan Chandio by invoking the provisions of section 426 (2-B), Cr. P.C. seek their release on bail by suspending their sentence during pendency of their Cr. Jail Petitions Nos. 263 & 264 of 2020 before the Apex Court, on granting leave to appeal, vide order dated 08.02.2023,

2. Briefly stated facts of the case leading to the filing of present application are that the applicants were nominated in Crime/F.I.R. No.380 of 2008, registered on 12.08.2008 at Police Station Dadu under sections 302, 324, 353, 147, 148, 149, P.P.C., r/w section 6/7, Anti-Terrorism Act, 1997 ("**Act of 1997**") for committing *qatl-i-amd* of H.C Roshan Ali, a member of the police force on duty. During course of

investigation, on 17.08.2008, police arrested the applicants Janan @ Janu and Aijaz; after usual investigation, police submitted the challan against them by showing other co-accused, including applicant Ali Hasan as absconders. Applicants Janan @ Janu and Aijaz were tried by the learned Judge, Anti-Terrorism Court, Hyderabad under ATC Case No.308 of 2008, and were convicted under sections 302/149, P.P.C. r/w section 6(2)(a), punishable under section 7(a) of the Act of 1997 and sentenced to death subject to confirmation vide judgment dated 24.12.2011. Having felt aggrieved by the conviction and sentence recorded by the Trial Court, the said applicants preferred Cr. Appeal No.D-405 of 2011 to this Court. Applicant Ali Hassan, who was shown absconder in challan, was subsequently arrested by the police on 16.01.2015. After completing necessary formalities, he was tried by the learned Judge, Anti-Terrorism Court, Naushero Feroz in Special Case No.03 of 2015 and was convicted for the offence under section 302(b), P.P.C. read with section 7(a) of Act of 1997 and sentenced to death subject to confirmation, vide judgment dated 09.03.2016. He assailed the said judgment before this Court in Cr. Jail Appeal No.D-23 of 2016.

3. Both the aforementioned appeals were dismissed by a learned Divisional Bench of this Court, vide separate judgments dated 02.07.2020, by maintaining the conviction and sentence recorded by the Trial Courts.

4. Being aggrieved by the said judgments of the Trial Courts and Appellate Court, the applicants filed Cr. Jail Petition Nos.263 and 264 of 2020, respectively, for special leave to appeal in the Apex Court in which leave to appeal has been granted vide order dated 08.02.2023. The

relevant portion of the leave granting order of the Apex Court is reproduced as under:-

*"2. It has been argued, inter alia, by the learned counsel for the petitioners that P.W-7 who is eye-witness of the occurrence has resiled from his statement; that the identification parade was not properly conducted and that the material collected during the course of investigation was not put to the petitioners as per requirement of Section 342 Cr. P.C. The contentions raised by the learned counsel require consideration. We, therefore, deem it appropriate to re-appraise the entire evidence in the interest of safe administration of criminal justice. Leave to Appeal is accordingly granted in both these petitions."*

5. Heard, record perused.

6. Learned counsel for the applicants submits that the applicants Janan and Aijaz are confined in judicial custody for last 16 years; that the Apex Court has indicated that the identification parade has not been held as per law and the material collected during the course of investigation was not put to the petitioners as per requirement of Section 342, Cr. P.C.; that since special leave to appeal has been granted by the Apex Court to applicants against the conviction awarded to them, the sentence is required to be suspended by admitting them on bail in view of section 426(2-B), Cr. P.C.

7. Conversely, learned Addl. P.G while opposing instant application maintains that the relief of suspension of sentence under section 426(2-B), Cr. P.C. is a discretionary relief and mere fact that the applicants have been granted leave to appeal by the Apex Court would not *ipso facto* give them right to seek the suspension of sentence; that no special circumstances have been pleaded for suspension of sentence. In support

of his contention, he has relied on the case of *Atta Ullah alias Hasnain alias Hassan vs. The State* reported as 2009 P Cr. L.J 257.

8. In order to appreciate the contentions of learned counsel for the parties, we deem it appropriate to reproduced subsection (2-B) of section 426, Cr. P.C. as under:--

*"Where a High Court is satisfied that a convicted person has been granted special leave to appeal from the Supreme Court against any sentence which it has imposed or maintained, it may, if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and, also if the said person is in confinement, that he be released on bail."*

It appears from the perusal of above provision of law that under section 426(2-B) *ibid* sentence could only be suspended if the High Court *thinks it fit*, even though special leave to appeal has been granted by the Apex Court. In the instant case, the applicants are convicted of murder of a police official and condemned to death. During the trial and hearing of appeals they were not admitted to bail. Neither the merit of the case can be touched nor is reappraisal of evidence permissible while deciding the application under section 426 (2-B) Cr. P.C. The contentions of learned counsel for the applicants that "the Apex Court has indicated that the identification parade has not been held as per law and the material collected during the course of investigation was not put to the petitioners as per requirement of Section 342, Cr. P.C.," are misconceived as that is not the observation of the Apex Court but the same were the arguments of the learned counsel for the petitioners/applicants before the Apex Court.

9. For the foregoing facts and reasons, we are of the considered view that the applicants have not been able to show good grounds for suspension of their sentence and grant of bail under section 426 (2-B) Cr. P.C. Consequently, instant Cr. Misc. Application stands dismissed.

**JUDGE**

**JUDGE**

*\*Hafiz Fahad\**