

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**
Cr. Appeal No.S-127 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objection.
2. For hearing of M.A. No.7364 of 2015.

22.09.2015.

Mr. Ishrat Ali Lohar, Advocate for the appellant.

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

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Through instant application under section 426 Cr.P.C, appellant seeks suspension of the judgment dated 10.09.2015, passed by the learned Sessions Judge, Mirpurkhas in Sessions Case No.58 of 2011, whereby the appellant was convicted under sections 320 P.P.C and sentenced to suffer R.I. 05 years and pay Diyat amount to the legal heirs of deceased Dr. Muhammad Aslam Hayat as per value of silver prescribed for the year 2010; for offence punishable under section 337-G PPC he was convicted and sentenced to suffer R.I. for 02 years so also to pay Daman of Rs.65,000/- and Rs.15000/- to P.Ws. Dr. Naveed Arbab and Ikram Hayat, respectively; for offence punishable under section 427 PPC he was convicted to suffer R.I. for 01 year and to pay fine of Rs.5000/-; for offence punishable under section 279 PPC, he was also convicted and sentenced to R.I. for 01 year; all the sentences of imprisonment were ordered to run concurrently.

2. Learned counsel for the appellant mainly presses the instant application on the ground that the appellant was convicted under sections 320, 337-G, 279 and 427 PPC and sentenced to suffer R.I. for 05 years with payment of Diyat amount, which is a short sentence and the disposal of main appeal would take time. He submits that the impugned judgment is capricious and is based on presumptions, suppositions, conjectures and surmises. He further submits that the sentence in the facts and circumstances of the case is harsh; therefore, he may be released on bail during pendency of instant appeal. In support of his contention, learned counsel for the appellant relied upon the case of **Masood Khan V. The State (P L D 2004 Karachi 386)**.

3. Learned A.P.G. has frankly conceded to the suspension of the sentences awarded to the appellant during pendency of main appeal, on the ground that the sentence is short one.

4. Heard arguments of the learned counsel for the parties and perused the record.

5. Learned counsel for the appellant while arguing the present application also relied upon the case of **NAZEER ALI alias NAZEER v. THE STATE (2011 Y L R 403)**, in which the sentence awarded to the accused was of 05 years and the learned Division Bench of this Court while treating the same as short sentence suspended the same. In the present case the sentence awarded to the appellant is also R.I. of 05 years with payment of Diyat amount; the instant appeal is pending since 12.09.2015; that during pendency of trial, the appellant was also on bail and since the date of pronouncement of the impugned judgment i.e. 10.09.2015 he is behind the bars; that looking to the backlog of appeals / cases at this Circuit, disposal of main appeal in near future is not in sight; that keeping the appellant behind the bars will not serve any purpose, because at the time of hearing of main appeal in case the appellant succeeds then agony already suffered by him while remaining in jail could not be measured in term of money. Accordingly, considering the facts and circumstances of the case, suspension of the impugned judgment at this stage would be just.

6. In view of above, the operation of the impugned judgment dated 10.09.2015 to the extent of imprisonments awarded to the appellant is suspended during pendency of main appeal and the appellant is directed to be released on bail subject to furnishing solvent surety equivalent to the Diyat amount, which should be calculated by the Additional Registrar of this Court while accepting the surety in accordance with law.

Application under section 426 Cr.P.C. is disposed of.

JUDGE

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