

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

Crl. Appeal No.145 of 2017  
Iroko Mercy Chimizie alias Jeff Jack More  
**Versus**  
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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18.12.2017	Raja Rizwan Abbasi, and Mr. Sohail Akhtar, Advocates for the applicant/appellant, Mr. Airf Chaudhry, Advocate for the applicant in Crl. Appeal No.149/2017, Mr. Waqar Ahmad Warraich, Advocate for the complainant, Mr. Rafaqat Ali, learned State Counsel with Khursheed Inspector F.I.A.
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**C.M.No.01/2017**

Through the instant application under Section 426 Cr.P.C. the applicant/appellant, namely, Iroko Mercy Chimizie *alias* Jeff Jack More, who was convicted under Section 36 of Electronic Transaction Ordinance, 2002, (“E.T.O., 2002”) read with Section 420 P.P.C., and sentenced to five years rigorous imprisonment with fine of Rs.10,00,000/- or in default thereof to further undergo simple imprisonment for six months, seeks the suspension of sentence. The applicant was also convicted under Section 420 P.P.C. and sentenced to five years rigorous imprisonment with fine of Rs.1,00,000/- or in default thereof to further undergo simple imprisonment for two months, by the learned Sessions Judge/Prevention of Electronic Crime Court, Islamabad, in case FIR No.72, dated 27.10.2015, registered under Sections 36/37 of the E.T.O., 2002, read with Sections 419, 420, 468, 471, 109 P.P.C., and Section

14 of the Foreigners Act, at the Cyber Crime Circle, FIA. The benefit of Sections 397 and 382-B Cr.P.C. was not extended to the applicant. In other words the said sentences were to run consecutively.

2. Learned counsel for the applicant submitted that the applicant was sentenced for a short period of only five years; that the applicant has been behind bars since 27.10.2015; and that the applicant is entitled to be released on bail on the ground of statutory delay as the decision on the applicant's appeal may take some time. Learned counsel prayed for the sentence awarded to the applicant to be suspended, and for the applicant to be released on bail until the final adjudication of the applicant's appeal. In support of his submissions, the learned counsel relied upon the judgments reported as 1999 SCMR 2589, 2008 MLD 312, and 2005 PCr.LJ 657.

3. Learned counsel for the complainant assisted by learned the learned State Counsel vehemently contested the application in hand by stating that although the applicant was convicted and sentenced for five years only, but the learned trial Court did not exercise discretion under Section 397 and 382-B Cr.P.C. in the applicant's favour; that as the benefit of the sentences to run concurrently had not been given by the trial Court, the applicant would undergo the sentences consecutively; and that the applicant's assertion that the sentences are too short, has no force; that even otherwise, amendment in the relevant provision of law

i.e. **Sub-Section (1-A)** of Section 426 Cr.P.C. was made on 20.04.2011, and as a result Sub-section (1-A) was re-enacted; that the applicant cannot seek relief under the said provision as the captioned appeal has been filed by the applicant on 19.10.2017, and therefore, no delay in the decision of appeal has been occasioned. Learned counsel prayed for the application in hand to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and perused the record.

5. The vital question that needs to be determined in the petition in hand is as to whether the applicant is entitled to be released on bail under Section 426 Cr.P.C. on the ground that the sentence awarded to the applicant is only five years. In order to determine such question effectively, it is imperative to reproduce the relevant portion of Sub-section (1-A) (a) and (b) of Section 426 Cr.P.C.:-

*"[(1-A) An Appellate Court shall, except where it is of opinion that the delay in the decision of appeal has been occasioned by an act or omission of the appellant or any other person acting on this behalf, order a convicted person to be released on bail who has been sentenced:-*

*(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction.*

*(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction.*

(Emphasis added)

6. The above-said provision makes it abundantly clear that a convicted person could apply for his suspension of sentence and release on bail only where the appellate Court is of opinion that the delay in the decision of appeal has not been occasioned by an act or omission of the appellant or any other person acting on this behalf. However, in the case at hand, it is an admitted position that applicant was convicted and sentenced by the trial Court, vide its judgment dated 18.10.2017, against which he preferred an appeal on 19.10.2017 before this Court. Only two months have lapsed since filing the appeal by the applicant.

7. I am of the view that since a period of one year since the filing of the appeal has not lapsed, the essential prerequisite of Sub-section (1-A) (b) of Section 426 Cr.P.C. has not been satisfied in the case in hand. Therefore, the applicant is not entitled to seek suspension of sentence at this early stage. The applicant's assertion that the sentence awarded to him by the learned trial Court is short, does not convince me for the simple reason that under Section 426(1-A)(b) Cr.P.C. it is *inter-alia* provided that the convicted person is entitled to be released on bail where he has been sentenced to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction. The applicant's case falls under Section 426 (1-A)(b) Cr.P.C., whereunder there must be a delay of one year in deciding the appeal by

the appellate Court. In the case at hand, the applicant filed the appeal before this Court on 19.10.2017, and after lapse of only two months in filing the appeal, the applicant filed the instant application. The applicant is at liberty to apply for the early adjudication of his appeal.

8. The applicant's version to suspend the sentences awarded to him by the learned trial Court is not tenable as the learned trial Court did not exercise the discretion to extend the benefit of Section 397 and 382-B Cr.P.C. to the applicant. Therefore, the sentences of five years rigorous imprisonment awarded to him would run consecutively and not concurrently.

9. The case-law relied upon by the learned counsel for the applicant is not applicable as it pertains to a period prior to the amendment/insertion of Sub-section (1-A) of Section 426 Cr.P.C. through the Code of Criminal Procedure (Amendment) Act, 2011.

10. In this view of the matter, the instant application, being devoid of merit, is dismissed.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Qamar Khan\*