

# Hakim & Anr vs State (Govt. Of Nct Of Delhi) on 22 October, 2020

**Author: J.R. Midha**

**Bench: J.R. Midha**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. A. 209/2020

HAKIM & ANR.

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Through: Mr. Archit Kaushik, Adv

Versus

STATE (GOVT. OF NCT OF DELHI)

...

Through: Ms. Aashaa Tiwari, APP

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

% 22.10.2020

1. The hearing has been conducted through video conference. CRL.M.(BAIL) 8038/2020 (interim suspension of sentence)

2. Vide this application moved under Section 389 Cr.P.C., appellant no.2 Umesh is seeking interim suspension of sentence for 12 to 15 weeks for taking care of his ill mother and wife as well as for taking care of his family, who is facing acute financial hardship.

3. It is submitted that appellant is in jail since 15.10.2015 and has already undergone substantial sentence i.e. 05 years & 07 days. It is submitted that his family is facing acute financial hardship as there is no male member in the family. It is submitted that his mother, aged 65 years is suffering from chronic bronchial asthma and also her vision is very low due to cataract with hyper tension beside other old age related ailments and on 07.10.2020 her operation is due from Dr. Gopal Aggarwal Eye Hospital, Bharatpur Gate, Mathura, Uttar Pradesh for cataract surgery. It is further submitted that appellant's wife who is aged about 33 years is suffering from low backache due to Lumbosacral spine problem which was diagnosed through MRI in 2018 and she is facing difficulty in doing her daily chores herself. It is further submitted that father of the appellant namely Hakim is also in judicial custody in the present case and is suffering from knee problem and doctor has

advised him total knee replace (TKR). He has already undergone surgery for prostate and is having high level of blood pressure beside other old aged problems.

4. It is further submitted by the learned counsel for the appellant that appellant also needs to arrange money for his family day to day survival beside school fees of his three children i.e. two daughters, aged about 14 & 13 years respectively and one son, aged about 11 years, which is not paid yet due to financial crunch. It is next submitted that applicant has taken friendly hand loan of Rs 1,00,000/- when applicant was constructing House at Laxmi Nagar, Mathura, Uttar Pradesh on 31.10.2013 from one of his relative namely Sh. Rajesh Kumar S/o Sh. Ratan Singh R/o Transport Nagar, P.S. Highway, Mathura, Uttar Pradesh Mobile No. 8006146795 with a promise to return double amount after 7 years and issued Cheque No. 018555 of Punjab National Bank, Chowki Bagh Bahadur, Mathura, Uttar Pradesh for Rs 2,00,000/- at present the amount is due and the total amount of Rs. 2,00,000/- is payable on or before 30.10.2020. It is, therefore, prayed that sentence of appellant be suspended for 12 to 15 weeks.

5. Learned Additional Public Prosecutor for the State has opposed the application. It is submitted that allegations against the appellant are serious in nature. It is, therefore, prayed that the application be dismissed.

6. We have considered the rival submissions. The appellant has been convicted by the Ld. Trial Court in FIR 130/2014, under Sections 326- A/34 IPC, PS Govind Nagar, Mathura, U.P. vide judgment dated 23 rd December, 2019. The appellant is seeking suspension of sentence for taking care of her ill mother and wife as well as for taking care of his family, who is facing acute financial hardship. Perusal of status report reveals that other family members i.e. Smt. Urmila w/o of Dharmendra and Smt. Tulsi w/o Ravi, who are the sisters-in-law of the appellant as well as Smt. Rajkumari, maternal aunt (Mausi) of the appellant are taking care of the mother and wife of the appellant. The allegations against the appellant are serious in nature. Perusal of judgment of Trial Court reveals that the Trial Court has found that the testimony of the injured victim (PW -4) is reliable and stands corroborated by the depositions of sister-in-law Rajjo (PW-6) as well as Dr. Bimal Upadhyay (PW-5) who had stated that the victim had suffered chemical burns over her left side face, neck, back of the left side chest with left shoulder with upper arm and Dr. Nirpen Gaur (PW-14) had stated that the injured victim (PW-4) was 30% handicapped and had no vision in the left eye upto the extent of 90% and there was scarring of the face due to burn of acid. In view of the above facts appearing on record and keeping in mind the serious nature of offence, we are not inclined to suspend the sentence of the appellant. The application for interim suspension of sentence is, therefore, dismissed.

7. A copy of this order be sent to concerned Jail Superintendent through Learned Additional Public Prosecutor for the State.

8. List in due course on its own turn in the category of 'Regulars'.

9. The order be uploaded on the website of this court forthwith.

J.R. MIDHA, J BRIJESH SETHI, J OCTOBER 22, 2020/AP