

Gyanendra @ Gyanu Shukla vs The State Of Madhya Pradesh on 31 July, 2018

THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No.1637/2017

Gyanendra @ Gyanu Shukla
Vs.
State of M.P.

Dated 31.07.2018

Shri P. N. Pathak, counsel for the appellant.

Shri N. Chourasiya, Government Advocate for the
respondent/State.

Record of the Court below has been received.requisitioned. Heard on admission.

Admit.

Learned Government Advocate for the respondent/State accepts notice on behalf of the respondent/State; as such, no further notice is required.

Heard on I.A. No.10404/2018 (Second Application) for suspension of sentence and grant of bail under Section 389 (1) of the Code of Criminal Procedure filed on behalf of appellant Gyanendra @ Gyanu Shukla.

His first application for the same relief had been dismissed as withdrawn vide order dated 9.2.2018 passed by a co-ordinate Bench of this Court comprising Hon'ble Shri Justice G.S. Ahluwalia. Since, his lordship is no longer available to sit in the Principal Seat at Jabalpur; this second application (I.A. No.10404/2018) for suspension of sentence and grant of bail has been posted before this Bench.

A perusal of the impugned judgment reveals that the appellant Gyanendra @ Gyanu Shukla stands convicted under Sections 397, 392 and 458 of the Indian Penal Code and Section 25(1-B)B and 25(1-B)A of the Arms Act and has been sentenced to undergo effective rigorous imprisonment for a period of ten years and fine in the sum of Rs.15,000/-, with default stipulations. THE HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.1637/2017 Gyanendra @ Gyanu Shukla Vs. State of M.P. As per the prosecution case, appellant Gyanendra @ Gyanu Shukla along with co-accused Subhash Samundre entered the house of the victim who was an S.D.O. in P.W.D. Department, and on the point of a country made pistol and a knife, robbed him of Rs.20 lakhs in cash and gold and silver coins worth Rs.2,50,000/-. During investigation, large amount of cash and silver coins and a country made pistol have been seized from the possession of the appellant pursuant to a disclosure statement made by him. The victim identified the appellant during

investigation in test identification parade and during the trial in the dock.

Learned counsel for appellant Gyanendra @ Gyanu Shukla submits that at the time of the robbery, the miscreants had their faces covered. The victim has given wrong heights of the miscreants in the FIR. The faces of miscreants were not kept covered after their arrest and before the identification parade; therefore, the identification loses any value. It has also been submitted that no hurt was caused during the incident; therefore, section 397 of the I.P.C. would not be made out. The appellant Gyanendra @ Gyanu Shukla had been suffering from kidney related ailments; therefore, it has been prayed that the appellant be released on bail.

Learned Government Advocate for the respondent/State on the other hand vehemently opposed the application mainly on the ground that a large amount in cash as well as gold and silver coins were seized upon the disclosure statement made by the appellant. The gold and silver coins were identified by the victim. In addition thereto, country made pistol was also seized from his possession. He has been identified during identification parade and in the dock; THE HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.1637/2017 Gyanendra @ Gyanu Shukla Vs. State of M.P. therefore, objections raised by the learned counsel for the appellant are baseless. There was only a minor discrepancy in the actual heights of the appellants and the heights given in the first information report; therefore, it has been prayed that the application be dismissed.

Keeping in view the facts and circumstances of the case in their entirety, particularly the facts as pointed out by the learned government advocate for the respondent/State; in the opinion of this Court, this is not a fit case for grant of bail.

Consequently, I.A. No.10404/2018 (Second Application) for suspension of sentence and grant of bail under Section 389 (1) of the Code of Criminal Procedure filed on behalf of appellant Gyanendra @ Gyanu Shukla, is dismissed.

However, the appellant shall be free to move appropriate application for temporary bail on health grounds.

Certified copy as per rules.

(C.V. Sirpurkar) Judge ahd Date: 2018.08.01 22:57:02 -07'00' THE HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.1637/2017 Gyanendra @ Gyanu Shukla Vs. State of M.P.