

Gatta @ Omsingh @ Omi vs The State Of Madhya Pradesh on 22 October, 2020

Author: Rajendra Kumar Srivastava

Bench: Rajendra Kumar Srivastava

1

The High Court Of Madhya Pradesh

CRA-9644-2018

(GATTA @ OMSINGH @ OMI Vs THE STATE OF MADHYA PRADESH)

17

Jabalpur, Dated : 22-10-2020

Heard through Video Conferencing.

Shri Sunil Kumar Mishra, learned counsel for the appellant.

Shri Dinesh Prasad Patel, learned Panel Lawyer for the
respondent- State.

Record of the court below has been received.

Appeal is admitted for final hearing.

Also, heard on I.A.No.17410/2019, which is first application for suspension of sentence and grant of bail to the appellant.

Accused/appellant has been convicted by the learned 1st ASJ, Tikamgarh by the judgment dated 20.11.2018 in ST No. 155/2012 for offence punishable under Sections 392 read with Section 397 of IPC and sentenced him to undergo RI for 7 years with fine of Rs. 20,000/-. The Court has also imposed default stipulation upon the appellant/accused.

Ac c o r d i n g to the prosecution case, in short, is that complainant/Anil Kumar has lodged the FIR dated 19/05/2020 alleging therein that appellant and other co-accused persons, armed with country made pistol (katta), have committed robbery of Rs. 5000/-, motor cycle, one mobile, ATM Card, Pen card, mangal Sutra, gold neckles, silver kardhoni worth or Rs. 51,000/- from the complainant.

Learned counsel for the appellant/accused submits that the present accused/appellant is in jail since 28.05.2019. During trial he was remained in jail from 11.06.2012 to 21.05.2014, 30.06.2018 to 20.11.2018 and 02.12.2018 to 03.04.2019. He remained in jail about four years and three months. Therefore, he has served the substantial jail Signature SAN Verified Not sentence out of maximum seven years sentence. Learned counsel for the 2 CRA-9644-2018 appellant further submits that neither appellant has looted any ornaments nor seized anything from his exclusive possession. Appellant/accused was made as an accused only on the basis of suspicion. Appellant/accused is not named in the FIR. It is alleged by the prosecution that during investigation, in identification parade,

Anil Kumar (PW-1) and Ritu (PW-2) identified the appellant/accused and they also identified before the trial Court at the time of evidence., but they admitted in their evidence, at the time of incident, appellant/accused tied his mouth by towel. So they are not able to identify the appellant/accused. It is alleged by the prosecution that looted motor cycle was seized from his possession. But it is evident from the evidence of witnesses, motor cycle was seized in an hut of one Govind Singh but he was not produced by the prosecution as a witness and during investigation, his statement has not been recorded. Therefore, case is very doubtful.

Appellant/accused is a labour and he is breadwinner of his family. If he keeps in jail for long time then his future will be spoiled. He also submits that there are many contradictions, omissions and improvements in the version of the prosecution witnesses. He further submits that there are fair chances to succeed in the case. Appeal is of the year 2018 and final hearing of this appeal will take time for its final disposal. If the appellant is not released on bail, purpose of filing this application will be futile. Therefore, the application filed on behalf of the appellant may be allowed and the period of her remaining jail sentence may be suspended and he may be released on bail.

Learned Panel Lawyer has opposed the application and prayed for its rejection.

Considering the contention of both the parties and this fact that Signature SAN Verified Not accused/appellant is in jail since 28.05.2019 and during trial he 3 CRA-9644-2018 remained in jail from 11.06.2012 to 21.05.2014, 30.06.2018 to 20.11.2018 and 02.12.2018 to 03.04.2019, therefore he served about four years and three months of jail sentence, therefore, he has served the substantial jail sentence out of maximum seven years sentence. there is no probability of his absconding and also this fact that other co-accused has already been released on bail by this Court vide order dated 20.11.2017 passed in Cr.A.No.3343/2017. This appeal is of the year 2018. Due to spread of COVID-19 pandemic, final hearing of this appeal will take time, but without commenting anything on the merit of the case, I am of the considered opinion that it would be appropriate to suspend the custodial sentence awarded to the appellant and grant bail to him. Consequently, I.A.No.17410/2019 is allowed subject to deposit of fine amount, if not already deposited. The custodial sentence awarded to the appellant shall remain suspended during the pendency of this appeal.

Appellant-Gatta @ Om Singh @ Omi be released from custody subject to his furnishing a personal bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with two surety in the amount of Rs. 50,000/- (Rupees Fifty Thousand Only) each to the satisfaction of the trial Court. The appellant shall appear and mark his presence before trial Court District Bhopal on 14.12.2020 and shall continue to do so on all such future dates as may be given in this behalf, during pendency of the matter.

In view of the outbreak of 'Corona Virus disease (COVID-19)' the appellant shall also comply with the rules and norms of social distancing. Further, in view of the order passed by the Hon'ble Supreme Court in suo moto W.P.No.1/2020, it would be appropriate to issue the following direction to the jail authority :-

1. The Jail Authority shall ensure the medical examination of the appellant by the jail doctor before his release.

Signature Not SAN Verified 2 . The appellant shall not be released if he is suffering from 4 CRA-9644-2018 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3 . If it is found that the appellant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

List this matter along with Cr.A. No. 3343/2017 for final hearing in due course, as per listing policy.

C.C. as per rules.

(RAJENDRA KUMAR SRIVASTAVA)
JUDGE

L.R.

Signature
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