

Himalay Pavar vs The State Of Madhya Pradesh on 3 September, 2020

Author: Rajendra Kumar Srivastava

Bench: Rajendra Kumar Srivastava

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The High Court Of Madhya Pradesh

CRA-214-2018

(HIMALAY PAVAR Vs THE STATE OF MADHYA PRADESH)

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Jabalpur, Dated : 03-09-2020

Heard through Video Conferencing.

Shri Manish Tiwari, Advocate for the appellant.

Shri Gourav Tiwari, P.L. for the respondent-State.

Record of the trial Court has been received.

Heard on the question of admission.

Appeal is admitted for final hearing.

Now heard on I.A. No.4351/2020 (first application) an application for suspension of execution of sentence awarded to the appellant and grant of bail. The first application bearing I.A. No. 752/2018 for suspension of sentence and grant of bail to the appellant stands dismissed as withdrawn with liberty to renew the prayer after completion of four year of his appellant's jail sentence vide order dated 10.04.2019.

Vide judgment dated 11.11.2017 in S.T. No. 28/2016 passed by learned 13th Addl. Sessions Judge, Bhopal, M.P., the appellant has been convicted for the offence punishable under Section 392/34, 397/34 of IPC and sentenced him to undergo R.I. for 10 years with fine of Rs. 10,000/-, Section 25-1(1-B)(A) of Indian Arms Act and sentenced him to undergo R.I. for 7 years with a fine of Rs. 10,000/-, R.I. for 1 year with a fine of Rs. 1,000/- and Section 27 of Indian Arms Act r/w Section 34 of IPC and sentenced him to undergo R.I. for 3 months with a fine of Rs.2,000/- with default stipulation.

As per prosecution case, on 28.08.2015, one Saroj Gupta alongwith her husband, R.K. Gupta went to Shukrawara Market, Bhopal from their car bearing Registration No. MP-04-CM-5081. They were Signature SAN Verified Not returning from the market by bringing vegetables. R.K. Gupta was driving 2 CRA-214-2018 the car and Saroj Gupta was sitting next to R.K. Gupta. In the night at about 9.30 P.M. before ITI Road, the car was overtaken by one Pulsar Motorcycle bearing Registration No. MP-04-MN-2789 on which two people were sitting. The boy, who were sitting on

the backside of the Pulsar has snatched the gold chain weighing about 1.5 tola from the neck of Saroj Gupta by putting his hand in the open window of the car and thereafter, boys tried to fled away from the spot. Saroj Gupta, cried, then his husband hit the motorcycle near ITI Road. Both people fell down with the motorcycle. Nearby people reached the spot. One of the boy has fired from a pistol and fled away from the spot. Saroj Gupta report the matter to the concerned Police Station. Thereafter, police has arrested the appellant and other co-accused person and registered the aforesaid offence against them.

Learned counsel for the appellant has submitted that appellant is in jail since 29.08.2015. Appellant has served half of his jail sentence. It is further submitted that the identification of appellant is very doubtful. No looted property has been seized from the possession of the appellant. It is admitted fact that no injury was caused or attempt to cause at the time of committing robbery by the appellant. It is alleged by the prosecution that appellant has fired from katta after robbery to save himself. No injury is found on the body of complainant and his husband R.K. Gupta. So, no case is made under Section 392 & 397 of IPC. There are material contradiction and omission in the statement of the prosecution witnesses. This appeal is of year 2018 and trial will take time to conclude the same. There is fair chance to succeed in the appeal. There is no likelihood of his absconding and tampering with the evidence. Under the circumstances, if the execution of sentence of the appellant is not suspended, his right to file appeal will be futile. Hence, prayer is made Signature SAN Verified Not for suspension of jail sentence and grant of bail to the present appellant-

3 CRA-214-2018 accused.

On the other hand, learned Panel Lawyer for the respondent-State opposes the submission of appellant's counsel and prays for rejection of application.

Heard and perused the record.

Having considered the argument advanced by learned counsel for the parties and the facts that the appellant is in jail since 29.08.2015 so he has served half of his awarded jail sentence and it is admitted fact that no injury was caused or attempt to cause at the time of committing robbery by the appellant, this appeal is of year 2018, final hearing of this appeal will take time but without commenting anything on the merits of the case, the said I.A. is allowed.

It is ordered that subject to payment of fine amount, if not already deposited, the execution of jail sentence of the appellant-Himalay Pavar shall remain suspended during the pendency of this appeal and he be released on bail on his furnishing a personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the same like amount to the satisfaction of the trial court for his appearance before the learned trial court on 27.11.2020 and thereafter on all other such subsequent dates, as may be fixed by the trial court in this regard.

In case, the appellant is found absent on any date fixed by the trial court then the said court shall be free to issue and execute warrant of arrest without referring the matter to this Court, provided the Registry of this Court is kept informed.

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 Signature Not SAN Verified appellant by the jail doctor before his release.

4 CRA-214-2018 2 . The appellant shall not be released if he is suffering from '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 for final hearing in due course, as per listing policy. C.C. as per rules.

(RAJENDRA KUMAR SRIVASTAVA)
JUDGE

Pallavi

Signature
SAN Not
Verified