

Raj Kumar Vs. State of H.P.

Cr. Appeal No. 124/2023

14.10.2024 Present: Mr. Manoj Pathak, Advocate, for the appellant.

Mr. I.N. Mehta, Senior Additional Advocate General with Mr. Navlesh Verma, Ms. Sharmila Patial, Additional Advocates General and Mr. Raj Negi, Deputy Advocate General, for the respondent-State.

Cr. MP No. 3588/2024

By way of instant application filed under Section 430 of *Bharatiya Nagarik Suraksha Sanhita*, 2023 (for short "BNSS"), the applicant/appellant is seeking suspension of sentence.

2. The learned counsel for the applicant/appellant contended that the applicant is a first time offender and has already undergone more than 1/3rd of the sentence, as against the total sentence of ten years imposed upon him by the learned Trial Court. He further contended that the appeal is likely to take considerable time for its disposal, as such, the instant application may be allowed and the applicant, who has already undergone more than 1/3rd of the sentence, be released on bail during the pendency of the instant appeal.

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3. On the other hand, learned Additional Advocate General contended that the applicant/appellant is not entitled to be released on bail during the pendency of the present appeal, as he has been convicted in a serious offence.

4. We have heard the learned counsel for the applicant/appellant as well as learned Additional Advocate General and have also gone through the material available on record.

5. In ***Satender Kumar Antil vs. Central Bureau of Investigation & another***, (2022) 10 Supreme Court Cases 51, after taking note of the provisions of Section 436A, Cr.P.C., the Hon'ble Apex Court held as under:-

“63. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word ‘trial’ will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word ‘shall’ clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly

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when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded....."

6. Section 436-A of Cr.P.C. has now been replaced by Section 479 of the BNSS, the relevant portion whereof reads as under:-

"479. Maximum period for which undertrial prisoner can be detained. – (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (now being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under law, he shall be released by the Court on bail; Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:"

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7. The instant appeal is of the year 2023 and the same is not likely to be decided in near future and there is also nothing on record to suggest that the delay in deciding the appeal is attributable to the applicant/appellant. Therefore, in view of the facts and circumstances of the case, since the applicant has already undergone more than 1/3rd of the sentence, as

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against the total sentence of ten years imposed upon him by the learned Trial Court and keeping in view the provisions of Section 479 of BNSS and also the aforesaid judgment of the Hon'ble Supreme Court, the substantive sentence imposed upon the applicant by the Trial Court, vide judgment of conviction, dated 28.03.2023 and order of sentence, dated 29.03.2023, passed by learned Special Judge-II, Kinnaur at Rampur Bushahr, District Shimla, H.P., shall remain suspended, till final disposal of the appeal, however, subject to the applicant's furnishing personal bond in the sum of Rs. 1,00,000/- with two sureties in the like amount to the satisfaction of learned Trial Court and also subject to deposit of the fine amount, if not already deposited. On furnishing the requisite bail bonds and on depositing the fine amount, he be released forthwith, if not required in any other case, however, with the undertaking to appear before this Court as and when directed and in the event of the dismissal of the appeal, the applicant/appellant will surrender before the Court.

8. However, it is made clear that the applicant shall not indulge himself in the same crime and maintain good social behaviour, or else, this order shall be liable to be cancelled.

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9. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding the present application. The application stands disposed of.

**(Tarlok Singh Chauhan)
Judge**

**(Sushil Kukreja)
Judge**

14th October, 2024
(raman)