

Diwan Chand Vs. State of HP

**Cr. Appeal No.123 of 2023**

14.06.2024 Present: Mr. George Advocate, for the appellant.

Mr. I.N. Mehta, Senior Additional Advocate with Ms. Sharmila Patial, Additional Advocate General, Mr. J.S. Guleria & Mr. Raj Negi, Deputy Advocates General, for the respondent/State.

**Cr.MP No.1022 of 2024**

This is the fourth application filed on behalf of the applicant seeking suspension of sentence. The applicant, at the time of filing of the appeal, had preferred an application being Cr.MP No.1203 of 2023 for suspension of sentence, but sought permission for withdrawal of the same unconditionally as is evident from order passed on 12.04.2023, which reads as under:-

“Learned counsel for the applicant seeks permission to withdraw the instant application. Permission granted. Accordingly, the application is dismissed as withdrawn.”

2. Thereafter, he filed another application with the similar relief being Cr.MP No.2420 of 2023, which came up for consideration on 14.07.2023 and the learned counsel for the applicant, after arguing for a sufficient long time, again sought permission to withdraw the said application as is evident from order dated 14.07.2023, which reads as under:-

“In view of the nature of conviction and sentence imposed by the learned trial court, that too, after a full-fledged trial, learned counsel for the applicant/appellant seeks permission to withdraw the application. Accordingly, the application is dismissed as withdrawn. However, the hearing of the main appeal be expedited”.

3. The applicant then filed yet another application being Cr. MP No.4488 of 2023, after change of the counsel, which came up for consideration on 07.12.2023 and the same was dismissed as there were no changed circumstances as is evident from the order passed on the said date, which is reproduced as under:-

*"The earlier application filed by the applicant/appellant for suspension of sentence has already been dismissed as withdrawn, as is evident from the order dated 14.07.2023. There are no changed circumstances. Consequently, the application seeking the same relief is dismissed."*

4. It appears that the applicant thereafter approached the Hon'ble Supreme Court by filing Special Leave Petition (SLP). However, the said SLP was withdrawn by the petitioner with liberty to approach this Court at appropriate stage of trial and after that he filed the instant application again for the suspension of sentence.

5. As observed in order dated 07.12.2023, there are no changed circumstances, which may warrant suspension of sentence.

6. Learned counsel for the applicant/appellant would then place reliance upon the judgment rendered by learned Single Judge of this Court in **Cr.MP(M) No.2522 of 2023**, titled **Sohan Singh Vs. State of HP**, decided on 22.11.2023, to contend that the statement of co-accused cannot be used against his client. This is a matter which is required to be seen at the time of final hearing of the appeal.

7. Consequently, we find no merit in this application and the same is dismissed.

**(Tarlok Singh Chauhan)**  
**Judge**

June 14, 2024  
(VH)

**(Sushil Kukreja)**  
**Judge**