

Govind & others Vs. State of H.P.

Cr. Appeal No. 213 of 2023

21.11.2024

Present: Mr.Geroge, Advocate, for the appellants.

Mr.Ramakant Sharma, Additional Advocate General, for the respondent.

Cr.M.P. No. 3191 of 2024

This application has been filed on behalf of appellant/convict Sunil Kumar for suspension of sentence awarded to him vide judgment/order dated 22.5.2023/23.5.2023, whereby he has been convicted and sentenced to undergo rigorous imprisonment for life for commission of offence under Section 302 and 34 of the Indian Penal Code and to pay fine of ₹2,00,000/- and in default of payment of fine to further undergo simple imprisonment for 1 year.

2. Applicant/appellant has also been convicted and sentenced under Section 201 of the Indian Penal Code to undergo simple imprisonment for 2 years and to pay fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for 1 month.

3. Learned counsel for the applicant/appellant has pointed out, as also evident from the record, that challan against the applicant/appellant Sunil Kumar was presented for commission of offence under Section 201 of the Indian Penal

Code and accordingly on 15.2.2018, charge was also framed for offence punishable under Section 201 of the Indian Penal Code. However, despite framing of charge under Section 201 IPC only, applicant/appellant Sunil Kumar, apart from conviction under Section 201 IPC, has also been convicted for commission of offence under Section 302 read with Section 34 of the Indian Penal Code alongwith other co-accused and sentenced to undergo rigorous imprisonment for life, whereas neither challan was presented against him under Section 302 IPC nor he was charged for commission of offence under Section 302 IPC.

4. Maximum sentence under Section 201 of the Indian Penal Code for commission of offence, in a case related to offence punishable for imprisonment for life or death, is 7 years and fine. Whereas, under Section 201 of the Indian Penal Code, appellant/applicant Sunil Kumar has been sentenced to undergo imprisonment for 2 years.

5. As per provisions of Section 430 of Bharatiya Nyaya Sanhita (Section 389 of Cr.P.C.), for awarding sentence to applicant/appellant under Section 201 of the Indian Penal Code for a period of less than 3 years, the Trial Court was competent to suspend the sentence on furnishing bail bonds by the applicant/appellant, because for framing of no charge under Section 302 IPC, appellant/applicant could not have been

convicted and sentenced for offence punishable under Section 302 IPC.

6. In aforesaid facts and circumstances and provisions of law, we are of the considered opinion that a prima facie case is made out for suspension of sentence of applicant/appellant Sunil Kumar at this stage.

7. Accordingly, sentence imposed upon applicant/appellant Sunil Kumar is suspended during pendency of present appeal, subject to furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of Trial Court, undertaking therein to appear in the Court as and when directed to do so and also to surrender for serving the sentence, if any liable to be served by applicant/appellant Sunil Kumar, on final decision of present appeal and also subject to deposit of fine of ₹5,000/- in the Trial Court.

The application is allowed and disposed of in aforesaid terms.

***(Vivek Singh Thakur),
Judge.***

***(Rakesh Kainthla),
Judge.***

21st November, 2024.
(Keshav)