

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.(Bail) No.1111/2016 in CRL.A. No.1512/2014

SHER SINGH @ SHERU @ PANKAJ Appellant
Through Ms.Sumita Kapil, Adv. with
Ms.Pooja Swami, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through Ms.Aashaa Tiwari, APP for the State.
SI Mandeep Sangwan, PS Crime
Branch.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **21.10.2016**

Crl. M. (Bail) No. 1111/2016/2016 (for suspension of sentence)

1. By this application the appellant is seeking suspension of sentence imposed upon him vide order dated 14.08.2014 pursuant to his conviction for commission of offence under Sections 193/201/302/307/419/468/471/120B/34 of IPC read with Sections 25/25(1B)/27/29 of Arms Act by judgment dated 08.08.2014.

2. Ms. Sumita Kapil, learned counsel for the appellant and

Ms.Aashaa Tiwari, Additional Public Prosecutor for the State have carefully drawn our attention to the record.

3. Inter-alia, it has been argued by Ms. Sumita Kapil, that the learned trial court has completely disbelieved the theory of conspiracy on which the entire prosecution case rested against the appellant and 11 other accused who were arrayed as accused for commission of offence in regard to which FIR No.253/2001 was registered by Police Station Parliament Street. As a result, the trial court has acquitted 11 accused persons. Our attention has been drawn to para 225 of the impugned judgment whereby the learned trial Judge has completely disbelieved the motive attributed to the appellant and his co-accused. In support of the conclusion arrived at by the learned trial Judge, the court has made reference to the testimony of Pankaj Kalra (PW-62), which has been dealt with in para 52, 53 of the judgment.

4. Ms. Sumita Kapil has further argued that the appellant was not named in the first statement given by Kali Charan, who has formed the rukka upon which, the FIR No.253/2001 was registered. In fact, she would submit that as per the rukka, the appellant was not the

person involved in the commission of the offence.

5. Ms. Kapil, learned counsel for the appellant has also referred to the testimony of the eye witness PW-52 Kali Charan who has disclosed that he had clearly seen the faces of the assailants and has ascribed commission of the offence to a person named 'Pankaj'. She has placed before us the testimony of PW-52 Kali Charan wherein he has stated that Sher Singh Rana and Pankaj are two different persons.

6. In this regard Ms. Sumita Kapil, learned counsel for the appellant has also placed the evidence of Munni Devi (PW-104), who has also stated that Pankaj was the driver of Uma Kashyap. This witness further stated that Sher Singh is not known by the name of Pankaj.

7. Ms. Sumita Kapil, learned counsel for the appellant would urge that though the learned trial judge has noted in the judgment dated 08.08.2014, that the appellant has disputed that he was known by the name of 'Pankaj', however, he has erroneously failed to consider this aspect of the matter.

8. Learned counsel for the appellant further urged that the

prosecution have attempted to cast a cloud over the character of the appellant by urging that he has a criminal record. She has referred to paras 231 to 233 of the judgment wherein the trial court has noted that the appellant has stated that he was falsely implicated in two criminal cases at the behest of the Delhi Police. Though there is no finding with regard to such contention, but the trial court has noted that the appellant was discharged in both the cases.

9. It is urged that the circumstance of abscondance which the trial court has noted, could be of no consequence so far as the conviction in the case is concerned. She has further challenged the extra judicial confessions attributed as having been made on 27.07.2001 to the print and electronic media by the appellant. In this regard, it is submitted by Ms. Sumita Kapil, learned counsel for the appellant that Surender Kapoor (PW-86) has stated that the appellant was interviewed at the Dehradun Police Station. She would also submit that so far as the extra-judicial confessions are concerned, the bar under Section 24 to 29 of the Indian Evidence Act would operate as the appellant was in the custody of the police when they are alleged to have been made.

10. Ms.Kapil has further submitted that the prosecution evidence that chance prints of the appellant were found at the vehicle and on the recovered weapon, have been disbelieved by the Trial Court and in this regard, has drawn our attention to para 106 and 300 of the judgment before us.

11. Learned counsel for the appellant has pointed out the presence of Vinod Vishwanath (PW-129) who is a chance witness and testified as an eye-witness in the case.

12. It is submitted that the appellant has a very good case on merits and there is every possibility of his succeeding in the appeal. Learned counsel would further submit that the appellant was arrested on 27.07.2001.

13. Ms. Aashaa Tiwari, Additional Public Prosecutor for the State has contended that the learned trial judge by the detailed judgment has discussed all the legally proven circumstances and rightly held the appellant guilty of commission of the offence. Ms. Tiwari points out that the Trial Court has noted that the appellant absconded for two years while the trial was pending.

14. The nominal roll dated 21st October, 2016 received from the jail would show that the appellant has undergone twelve years eleven months and fifteen days on the date of the report. So far as his jail conduct is concerned, the same refers to the period of abscondence between the 17th February, 2004 and 8th May, 2006 as was pointed out by Ms.Aashaa Tiwari, learned Additional Public Prosecutor on behalf of the State. No other jail offence has been pointed out.

15. The appellant is the sole convict who was convicted by the judgment dated 8th August, 2014 in the case arising out of FIR No.253/2001.

16. In view of the submissions noted by us heretofore, it cannot be contended that the appellant does not have an arguable case and the submissions made by learned counsel for the appellant do require detailed consideration.

17. We may also note that the State has also filed one appeal against the acquittal of the ten co-accused.

18. Given the current board position, it is not possible to immediately take up the appeal for consideration as hearing in old

matters is already underway. Hearing in the matter would also be prolonged inasmuch as the prosecution has examined 173 witnesses.

19. On a consideration of the entirety of the matter including the period of sentence already undergone by the appellant, we direct as follows:-

(i) Subject to the appellant furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Judge, the sentence imposed upon the appellant shall remain suspended during the period of appeal.

(ii) Upon his release, the appellant shall disclose the address at which he would remain available as well as the mobile number which he would be using during this period.

(iii) In case of any change in the address as well as the phone number, the appellant shall inform the Trial Court as well as the SHO of the Police Station Parliament Street, New Delhi.

(iv) The appellant shall not interact with the family of the deceased or any other witness.

(v) The appellant shall report to the Superintendent of Police (S.P.),

Roorkee, U.P. during day light hours on the second Saturday of June and December of each year i.e. twice a year commencing from 10th December, 2016.

(vi) In case of default, S.P., Roorkee shall inform the investigating officer of the same who would proceed in accordance with law.

(vii) It is made clear that nothing herein contained is an expression of opinion on the merits of the contentions of either side which have to be considered at the time of final hearing in the appeal.

The application is allowed in the above terms.

Dasti.

GITA MITTAL, J

P.S.TEJI, J

OCTOBER 21, 2016/aa