

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
CRR No. 729 of 2024

(SANJAY NAGAYACH Vs THE STATE OF MADHYA PRADESH)

Dated : 20-02-2024

Shri Anil Khare - Senior Advocate with Ms. Tanvi Khare - Advocate for applicant.

Shri Akshay Namdeo - Govt. Advocate for the State.

Applicant has filed revision against judgment dated 06.02.2024 passed by Additional Sessions Judge Pawai District Panna in Criminal Appeal No.09/2018 by which sentence of applicant has been enhanced.

2. Learned Senior Advocate appearing for the applicant submitted that notice is required to the applicant before enhancing the sentence. Notice of appeal and notice of enhancement of sentence cannot be said to be same thing. In this case, no notice has been issued. Substantial question of law has been raised by the applicant in this revision for consideration. It is also argued on behalf of applicant that surrendering of applicant is not necessary while preferring criminal revision before this Court. Relying on section 397 of the Code of Criminal Procedure, 1973, learned Senior Advocate submitted that if Court is satisfied regarding impropriety or illegality in the proceedings and call for the records for examination then Court may direct execution of sentence or order be suspended, and if applicant is in confinement, he may be released on bail. There is no bar under Section 397 for not entertaining the application until accused is in confinement. Reliance is placed on the order passed by Madras High Court in case of *Easwaramurthy Vs. N. Krishnaswamy reported in 2006 SCC Online Mad 1231*. Relevant paragraphs is quoted as under:-

The words "direct that the execution of any

sentence or order be suspended" have to be read dis-conjunctively from the words and if the accused is in confinement that he be released on bail or on his bond pending the examination of the record. Suspension of the execution of any sentence or order postulates that the petitioner is not in confinement. This Section gives jurisdiction to the revisional Court to suspend sentence even though the petitioner is not in confinement. The question of releasing Him on bail arises only when he is in confinement. Therefore, when the accused in confinement makes an application for suspension of sentence on order, the Court should not, only order suspension of the sentence or order but order his release on bail also. Not so, when he is not in confinement. This Section clearly recognizes the difference between a case where an accused is in confinement and when not in confinement. Thus, it will not be proper for the revisional Court to insist upon an accused to be remanded to confinement before his sentence can be suspended, for, that will be acting against the dear and express provisions contained in Section 397(1) of the Code, quoted above, enabling the revisional Court to exercise the twin jurisdiction vested in it in cases where the accused is in confinement and not in confinement. The matter becomes clear when the other sections of the Code are also considered....

8.....the revisional Court need not insist upon the confinement of the accused before ordering suspension of sentence or order passed against him. If the accused is in confinement, the revisional Court will have to direct his release on bail; if he is not in confinement, the revisional Court need only suspend the execution of the sentence or order, either on the

bond already executed or as directed by the revisional Court. Since the relevant provisions of the Code have clearly delineated the situation where the accusers presence is necessary, and since Section 397 is silent about the custody or confinement of the accused, the revisional Court need not insist upon bringing the accused to confinement before exercising the powers Under Section 397(1) of the Code."

6. In view of the abovesaid decision of the Hon'ble Supreme Court as well as the decision rendered by his Lordship Justice Khalid (as he then was), it is well settled that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the power contemplated Under Section 397(1) of Cr.P.C. as Section 397(1) Cr.P.C. itself is very clear that there is absolutely no ambiguity as the reading of the words "direct that execution of any sentence or order be suspended."

सत्यमेव जयते

3. Further reliance is placed on the order passed by Kerala High Court in case of *Ibrahim Vs. State of Kerla reported in 1979 SCC Online Ker 140*.

Relevant paragraphs is quoted as under:-

5. The jurisdiction of the appellate Court for suspension of sentence pending appeal is provided in S. 389 of the Code. For an appreciation of the question involved, S. 389(1) and (3) of the Code have to be read carefully. The headnote of S. 389 is "Suspension of sentence pending the appeal; release of appellant on bail". From this headnote itself it is clear that the code recognises the clear distinction between suspension of sentence and release on bail. In other words, it is not always

necessary that suspension of sentence should be followed by release of the accused on bail, the release of the accused on bail becoming necessary only when the accused is in confinement. S. 389(1) and (3) read:

“(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

X X X X

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

7. S. 389(1) read above, confers two powers on the appellate Court: to suspend the sentence and release the accused on bail, if he is in confinement. S. 389(3) enables the convicting Court, in cases of conviction both under bailable and non-bailable offences, contrary to what was contained in S. 426(2)(A), of the old Code, to direct the person convicted to be released on bail; on condition that if he is convicted, the sentence should not exceed a term of three years. Thus, S. 389(1) enables the appellate Court to suspend the sentence or release the accused on bail, while S. 389(3) enables the convicting Court to release an accused on bail even after conviction. None of the above-said sections make it obligatory on the part of the appellate Court to insist upon the accused to be present to receive judgment and none of the

provisions require the revisional Court to insist upon the confinement of the accused before suspending the execution of the sentence or order.

9. I should not be understood to hold that under no circumstances can a revisional Court insist upon the attendance of an accused or his surrender to his bail before sentence is suspended. In cases where the appellate Court after pronouncing judgment directs that the accused's bail bonds are cancelled, the accused has necessarily to surrender to his bail before he can obtain an order of suspension of his sentence, from the revisional Court. And in so doing, the revisional Court has necessarily to release the petitioner on bail in addition to suspending the sentence passed against him; which means that if there is no direction by the appellate Court for cancellation of the bail bonds, there is no necessity to release the accused on bail, because there is no need for him to surrender to his bail. Since S. 397 visualises exercise of dual powers by the revisional Court, to suspend the sentence and to release the accused on bail, it presupposes the fact that in one case, the accused is not in confinement while in the other he is in confinement. It is not as though the revisional Court has no powers to get the presence of the accused at any time. Under S. 401 the High Court has all the powers that the Court of Appeal can exercise under Ss. 386, 389, 390 and 391. The High Court is enabled, in an appeal against acquittal, by S. 390 of the Code to issue a warrant directing that the accused be arrested and brought before it or any subordinate Court and the Court before which he is brought can commit him to prison till the disposal of the appeal. Where an accused is acquitted, his bail bonds are automatically cancelled. The High Court can in appropriate cases resort to S. 390 of the Code. In an appeal against acquittal, the accused

need not be brought at all. Since the High Court in revision exercises all the powers of an appellate Court, it can in appropriate cases direct the accused to be brought up or direct him to attend the Court to hear the judgment. But has it the power under S. 387 of the Code. Among the sections enumerated in S. 401, S. 387 has been deliberately omitted, for the good reason that S. 387, deals with subordinate appellate Courts. The Code does not visualise the need for the High Court requiring the attendance of the accused to receive the judgment because necessary consequences will follow in enforcement of the bail bond executed by the accused after the judgment is rendered by the High Court."

4. After careful scrutiny of Section 397 of Code of Criminal Procedure and also Rule 48 of Chapter X of M.P. High Court Rules and Orders, it is clear that there is no requirement of surrendering before Court and to be confined or in jail for preferring criminal revision before High Court. If applicant is not in confinement then also criminal revision is maintainable before the High Court. If counsel for applicant is able to point out any impropriety or illegality in the judgment passed by the Court below then High Court may exercise its jurisdiction and powers of revision to call for the records and examine the same. While passing orders for summoning the records for examination, High Court may direct execution of sentence or order to be suspended. Once order of suspension of execution of sentence or order to suspend judgment of appellate Court is passed then if accused/applicant is in jail, he is to be released on bail. If accused is not in jail then Court may order him to furnish bail bonds for his appearance before the High Court when required.

5. Applicant has filed an application i.e. I.A. No. 4216/2024 for

exemption to surrender. *Prima facie*, illegality and impropriety in order is pointed out before the Court. In view of same, record from the trial Court is summoned. As held above, there is no requirement to surrender or to remain in jail for filing revision, therefore, I.A. No.4216/2024 is dismissed.

6. The applicant shall furnish a personal bond in the sum of **Rs.50,000/- (Rupees fifty thousand only)** to the satisfaction of the trial Court, for his appearance before Registry of this Court **on 26.04.2024** and on further dates as may be fixed by the Office till final disposal of the case.

List after four weeks.

C.C. as per rules.



(VISHAL DHAGAT)
JUDGE