HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc Suspension Of Sentence Application No. 2031/2024

in

S.B. Criminal Appeal No. 2973/2024

Fatehsingh S/o Manoharilal, Aged About 46 Years, R/o Timawa P.s. Nadauti District Karauli (Raj) (At Present Confined In District Jail Dausa)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

Connected With

S.B. Criminal Misc Suspension Of Sentence Application No. 1804/2024

in

S.B. Criminal Appeal No. 2697/2024

1. Santosh Son Of Shri Bhaurilal, Aged About 26 Years, Resident Of Dharanvas, Police Station Nangal Rajawatan District Dausa Rajasthan (At Present Confined In District Jail Dausa)
2. Rakesh Son Of Shri Siyaram, Aged About 26 Years, Resident Of Gerota Police Station Mehandipur Balaji District Dausa Rajasthan (At Present Confined In District Jail Dausa)

----Petitioners

Versus

State Of Rajasthan, Through P.p

----Respondent

S.B. Criminal Misc Suspension Of Sentence Application No. 1900/2024

in

S.B. Criminal Appeal No. 2820/2024

Prem Singh S/o Hariya, Aged About 38 Years, R/o Timawa P.s. Nadauti District Karauli (Raj) (At Present Confined In District Jail, Dausa)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

S.B. Criminal Misc Suspension Of Sentence Application No. 1901/2024

in

S.B. Criminal Appeal No. 2821/2024

Jagdish Son Of Vishram, Aged About 22 Years, Resident Of Bhavgarh Police Station Mehandipur Balaji District Dausa Rajasthan (At Present Is Confined In District Jail Dausa)

----Petitioner

Versus

State Of Rajasthan, Through P.p

----Respondent

S.B. Criminal Misc Suspension Of Sentence Application No. 2032/2024

in

S.B. Criminal Appeal No. 2974/2024

Ramavtar Son Of Jaldhari, Aged About 52 Years, Resident Of Gerota Police Station Mehandipur Balaji District Dausa (Raj) (Presently Confined In District Jail Dausa)

----Petitioner

Versus

State Of Rajasthan, Through P.p

----Respondent

For Petitioner(s)	:	Mr. Poonam Chand Sharma Mr. Rajveer Singh Gurjar with Mr. Kapil Nagayach Mr. Narendra Prasad Meena Mr. Arvind Sharma
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP with Mr.

Gaurav Gupta, AAAG
Mr. Saransh Saini with Mr. Abhilash Sharma

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

30/04/2025

1. These SOS applications were preferred by petitioners accused Fatehsingh, Santosh, Rakesh, Prem Singh, Jagdish, Ramavtar in pending appeals filed aggrieved from judgment of conviction and sentence dated 01.10.2024 passed by Additional Sessions Judge, Sikrai, District Dausa in sessions case no. 29/2020.

2. Learned counsel for petitioners submitted that petitioners are innocent persons and they were falsely implicated by complainant party. He further submitted that a complaint was filed after a delay of 3 days at Police Station Mehandipur Balaji with allegation against accused that on assurance of doubling the cash amount the complainant has paid ₹70,00,000/- for making it double of the paid amount. He further submitted that after registration of complaint the police has investigated the matter and without any concrete evidence filed a charge-sheet against the petitioners accused. He further submitted that accused were neither identified nor previously known persons of complainant and they were arrested without proper care and caution. He also submitted that the complainant has failed to explain transportation of money from his place to place as mentioned in site plan. He further submitted that as per prosecution witnesses, three vehicles with blue beacon arrived at the crime scene but only one blue beacon

was recovered from open place. He also submitted that the details of currency notes were not disclosed by complainant and recovery of same amount was not effected by police. He also pointed out that the trial court has opined that the investigating officer was negligent in carrying on investigation which indicates that the investigation was not full-proof and the accused were falsely implicated to pacify the complainant who filed report after due consultation and under influence of some highly placed officer. Learned counsel further referred the discrepancies in the statement of prosecution witnesses, particularly, in the statement of PW-1 Sunil Sharma, PW-2 Akshit Sharma, PW-3 Dinesh Sharma PW-4 Maya Ram and PW-14 Pankaj Sharma, and submitted that the deposition does not inspire confidence. Learned counsel has further submitted that one person Avinash was named by prosecution witnesses but he was not examined by prosecution. Learned counsel further submitted that most of the petitioners accused were neither named in FIR nor in the statement under Section 161 of Cr.P.C. Learned counsel further referred the record and submitted that the petitioners accused were on bail during trial and they have not misused the liberty granted to them.

3. Learned counsel for petitioner accused Fatehsingh submitted that Fatehsingh has already remained in custody for more than 3 years and 9 months and 15 days and none of the four eye-witnesses have named the petitioner of involvement in the incident. He further submitted that this petitioner was neither involved in the incident nor was part of any conspiracy and there is no evidence to implicate the petitioner accused. He also submitted that there is no criminal antecedents against the

petitioner. Learned counsel further submitted that one blue beacon allegedly used was recovered at the instance of Fatehsingh but same was recovered from open place and not from exclusive possession of Fatehsingh.

4. Learned counsel for petitioner Santosh, Jagdish and Rakesh submits that all were on bail during trial and at the time of arrest they were not kept Baparda (masked). Learned counsel has referred the statement of witnesses and submitted that police has not taken due care while effecting arrest. Learned counsel further referred Ex. P/36 and submitted that ₹10,00,000/- was recovered after this notice of registration of case by PW-20 from possession of Santosh. He further submits that this money belongs to Santosh and same is not a money generated from crime. He further submitted that there is no evidence to suggest that Santosh was on spot and he was busy in rites after death of his father.

5. Learned counsel for petitioner Prem Singh submitted that Prem Singh was not named in FIR and he worked as driver of complainant from year 2013 to 2015. He further referred para nos. 33 and 34 of impugned judgment and submitted that the complainant has filed a compromise on record but the trial court has not verified the compromise.

6. Learned counsel for petitioner Ramavtar submitted that this petitioner is not a main accused in the matter and he was not involved in the entire incident. He submits that at the most charge against Ramavtar is for performing Puja and not more than that. He further submitted that the main accused Narendra Meena was not named by police and no charge-sheet has been recommended

against him. He further submitted that the entire case was out from a property dispute and the complainant party in order to presurrize and to settle said property dispute has registered a false criminal case. He further submitted that the involvement of Ramavtar was doubtful from registration of case and the trial court has ignored material available on record.

7. Learned counsel for petitioners accused have placed reliance upon judgment in case of **Atul @ Ashutosh Vs. State of MP 2024 3 SCC 663** and referred and relied by Hon'ble Supreme Court in case of **Nanhelal Sharma Vs. State of M.P. (Criminal Appeal No 4763/2024),** to buttress the argument that if a fixed term sentence is awarded to any person (accused)/ appellant and appeal is not likely to be heard before complaint on entire sentence normally suspension of sentence and bail should be granted.

8. Aforesaid contentions were opposed by learned Public Prosecutor and learned counsel for complainant. Learned counsel for complainant while referring para no. 35 of impugned judgment submits that the Santosh is in fact Narendra also Santosh and he himself introduced as Narendra so police has also mentioned this fact in charge-sheet. He further submitted that initially most of the prosecution witnesses have not believed the story of accused for making double the money but after assurance of doubling the cash amount but due to insistence of PW-2 Akshit Sharma the entire family of complainant has believed that if certain amount is paid to accused then after some Puja, same shall be doubled and double the amount will be returned to them. He further submitted that the bona fides of complainant is available on record along

with series of event explained in deposition. He further submitted that this is a serious matter and the trial court has considered the merits of the case and the merit indicates that these petitioners were guilty and they are not entitled to be released on bail during pendency of this appeal.

9. Heard learned counsel for parties and learned Public Prosecutor. Perused the entire record. Learned PP has submitted custody certificate along with criminal antecedents of accused and same are taken on record.

10. On 13.09.2018 complainant PW-3 Dinesh Sharma has filed a written report to S.P. Dausa that his son Akshit (PW-2) met Narendra Meena @ Rajesh through Kalu Ram (a known person) and Rajesh has stressed that his father Ramavtar and mother are doubling money after performing prayer and Puja. On assurance, PW-2 visited the placed of Ramawatr where he went through an experiment and gave two currency notes of ₹500 each but after some time four currency notes were returned to him. After the narration of entire incidence, the complainant along with Akshit, Sunil and Pankaj visited village Garota on 10.09.2018 with ₹70,00,000 + .₹5,00,000. He further stated that the money was kept by them and after completion of 2-3 hours Puja all of a sudden Narendra and Ramavtar have shouted that police has arrived and both of them asked complainant to run away. Due to stone pelting and assembly of crowd of 10-15 persons the complainant and his accompanied persons were force to flee from spot. The complainant has further mentioned that they have asked Avnish to follow them on motor cycle. The complainant has demanded recovery of one Honda City Car, one motor cycle and

₹70,00,000/-, other articles and also bag contaning ₹5,00,000/-. On the basis of this report FIR no. 115/2018 under Sections 420, 384, 386, 120-B IPC was registered. After investigation police has filed charge-sheet against Fatehsingh, Santosh, Rakesh, Prem Singh, Jagdish, Ramavtar under Sections 420, 398, 171, 120-B of IPC.

11. After framing of charge the prosecution has examined 22 witnesses and exhibited 43 documents. The accused were examined under Section 313 Cr.P.C. and they have not submitted any defence witness. Seven documents were exhibited as Ex. D/1 to D/7.

12. Accused Rakesh was released on bail in pursuant to order dated 27.08.2019 in bail application no. 11336/2019, Ramavtar in pursuant to order dated 02.09.2019 in 2nd bail application no. 11737/2019, Santosh Kumar in pursuant to order dated 17.06.2019 in bail application no. 6615/2019, Prem Singh in pursuant to order dated 09.08.2019 in 2nd bail application no. 10203/2019, Jagish and Fatehsingh in pursuant to order dated 18.11.2021 in 6th & 9th bail application no. 17123/2021 and 17454/2021 by a Co-ordinate Bench of this Court. Thus, all six petitioners were on bail during trial.

13. A perusal of para no. 33 and 34 of impugned judgment dated 01.10.2024 indicates that the complainant Dinesh Kumar and Akshit Sharma have filed a compromise with an accused Prem Singh with an averment that Prem Singh was not involved in the incident and due to some misunderstanding his name was arrayed as an accused. This compromise was not attested by the trial court as the parties have not filed any application for permission

under Section 320(2) of Cr.P.C. because offence under Section 420 IPC is compoundable with permission of court but a copy of compromise is placed on record.

14. We have considered the grounds as raised by learned counsel for petitioners in support of their challenge to conviction by learned trial court. We have also considered the grounds of delay in reporting the matter to police as explained by complainant and also the discrepancies as referred by learned counsel for parties. Also taken note of the fact as mentioned in para no. 35 of impugned judgment that Santosh has himself introduced as Narendra @ Rajesh and same is evident from Ex P/5. The trial court has concluded that PW-2 has in fact met Santosh @ Narendra @ Rajesh at the instance of Kalu Ram.

15. At this stage, it is not possible for us to express any opinion on merit of the case. The grounds raised by learned counsel for petitioners accused to challenge the impugned judgment shall be considered at the time of final adjudication. Herein this case, the accused were convicted under Sections 420, 398, 171 and 120B of IPC. The maximum sentence awarded to each petitioner is seven years.

16. Learned Public Prosecutor has submitted criminal antecedents which indicates that besides present one, another case was registered against Fatehsingh and Prem Singh whereas seven criminal cases were registered against Ramavtar and four against Santosh. As per record, only present case is registered against Jagdish. No criminal antecedents reported about Rakesh.

17. Learned counsel appearing for Santosh submits that he was acquitted by learned Additional Sessions Judge, Lalsot in sessions

case no. 73/2016 arising out of FIR no. 96/2016 P.S. Ramgarh, Pachwara. Another copy of judgment dated 18.02.2025 in criminal case no. 285/2015 passed by learned Additional Chief Judicial Magistrate no.1, Dausa is also placed on record wherein Santosh was acquitted in a matter arising out of FIR no. 214/2013 P.S. Mahila Thana, Dausa. After taking note of two cases as referred by learned counsel for Santosh and also present one still no details were provided about case no. 292/2020 P.S. Manpur and 159/2024 P.S. Mehandipur Balaji District Dausa. In both the cases, charge-sheet has been filed. FIR no. 159/2024 is a recent case and it relates to house trespass, mischief and voluntarily causing hurt.

18. The details submitted by learned PP indicates that total seven cases were registered against petitioner accused Ramavtar and they are from year 2005 to 2018. Last one is present one. Learned counsel has submitted as per his knowledge almost all cases were disposed of except only one. He submitted that he is not having detail about disposal of the cases.

19. Having taken note of submissions of learned counsel, it is also relevant to note that two more cases under Section 420 IPC were registered against Ramavtar prior to registration of present case. Moreover, registration of seven criminal cases indicates that the person is having criminal background and charge-sheet were filed in all seven criminal cases, which indicates indulgence in criminal activities.

20. Having taken note of judgment in case of **State through CBI VS. Amarmani Tripathi (2005) 8 SCC 21,** two accused petitioners Ramavtar and Santosh having criminal antecedents are

not entitled for suspension of sentence but remaining accused petitioners are entitled to be released on bail.

21. Therefore, without expressing any opinion on merits, I am of considered view that it is a fit case wherein appellants- Fateh Singh, Rakesh, Prem Singh and Jagdish can be enlarged on bail. The application under Section 430(1) B.N.S.S. is allowed and sentence of appellant accused- **Fatehsingh S/o Manoharilal, Rakesh Son Of Shri Siyaram, Prem Singh S/o Hariya,** and **Jagdish Son Of Vishram** is suspended till disposal of appeal with the condition that each of them would execute a personal bond in the sum of ₹50,000/-with two sureties of ₹25,000/- each to the satisfaction of the learned trial Judge for their appearance in this court on **08.08.2025** and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. After release of appellant on bail, they will not indulge in any criminal activity and if it is found that they are involved in any criminal activity, the order shall be recalled.

2. That they will appear before the trial Court in the month of January of every year till the appeal is decided.

3. That if the applicant(s) changes the place of residence, they will give in writing their changed address to the trial Court as well as to the counsel in the High Court.

4. Similarly, if the sureties change their address(s),they will give in writing their changed address to the trial Court.

22. S.B. Criminal Misc Suspension Of Sentence Application No. 2032/2024 preferred by appellant- **Ramavtar Son Of Jaldhari** and S.B. Criminal Misc Suspension Of Sentence Application No. 1804/2024 in respect of **Santosh Son Of Shri Bhaurilal** are hereby dismissed.

23. Misc. Application stands disposed of.

24. A copy of this order be sent to learned trial court through E-mail.

(ASHOK KUMAR JAIN),J

CHETNA BEHRANI /26-30(SOSA)