

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Criminal Misc Suspension Of Sentence Application (Appeal)

No. 1728/2023

IN

S.B. Criminal Appeal No.3261/2023

Phool Singh Son of Lohre Lal, Resident Of Umreh, Police Station,  
Bari, District Dholpur (Rajasthan) (Presently Confined In Central  
Jail, Sear, District Bharatpur)

----Accused-Appeellant

Versus

1. State Of Rajasthan, Through Pp
2. Rajaram Son Of Ramji Lal, Resident Of Loharra, Police  
Station, Kailadevi, District Karauli (Rajasthan)
3. Ramji Lal Son Of Kajodya Meena, Resident Of Loharra,  
Police Station, Kailadevi, District Karauli (Rajasthan)

----Respondents

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For Petitioner(s) : Mr. Rajneesh Gupta

For Respondent(s) : Mr. Suresh Kumar, PP

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**HON'BLE MR. JUSTICE PRAVEER BHATNAGAR**

**Order**

**23/01/2024**

This Criminal Misc. Suspension of Sentence Application is preferred against the impugned judgment dated 27.10.2023 passed by the learned Additional Sessions Judge, Karauli in Sessions Case No.58/2018, CIS No.58/2018, whereby, the accused-appellant Phool Singh was convicted for the offence under Sections 323, 341, 307 and 458 of I.P.C.

Learned counsel for the accused-appellant submits that accused-appellant has wrongly convicted under Sections 323, 341, 307 and 458 of I.P.C. He further submits that no firearm injury was found on the injured at his finger by the concerned Medical Jurist.

PW-1 Rajaram has specifically stated the fact that accused-appellant fired at him which hit at his palm resulting into injury at his finger.

Learned counsel for the accused-appellant further submits that the learned trial Court has acquitted the other four accused. The specific role of accused-appellant using the firearm could not be proved but despite that learned trial court convicted the accused-appellant under Sections 323, 341, 307 and 458 of I.P.C. He also submits that there is no examination from the Ballistic Expert that injury No.2 was due to use of firearm. The only firearm injury caused to the injured Rajaram was attributed to the accused Gopal, who has been acquitted under Sections 341, 323 and 307 of I.P.C.

Learned counsel for the accused-appellant further submits that injury No.1 is a lacerated wound present over the ring finger of left hand with clotted blood. The concerned doctor PW-13 Laxmikant in his cross-examination has admitted the fact that all the injuries apart from injury No.2 were found to be simple in nature. There is no criminal antecedents against the accused-appellant and in FIR No.393/2012, the accused-appellant has been acquitted under Sections 325, 332 and 353 of I.P.C., so also the decision of the appeal may take considerable, therefore, sentence awarded to the accused-appellant may be suspended during the pendency of the appeal.

Learned Public Prosecutor vehemently opposes the suspension of sentence application and submits that PW-1 Rajaram and other eye-witness PW-9 Ramraj have corroborated the prosecution story. The accused-appellant Phool Singh was

apprehended at the place of occurrence on the same day and his involvement is proved by PW-1 Rajaram and PW-9 Ramraj. The learned trial court has rightly convicted the accused-appellant under Sections 323, 341, 307 and 458 of I.P.C., therefore, considering the gravity of offence, suspension of sentence application may be dismissed.

Heard learned counsel for the accused-appellant as well as learned Public Prosecutor on the application for suspension of sentence and perused the material available on record.

Considering the fact that injury No.1 caused to PW-1 Rajaram is attributed to the accused-appellant and after medical examination that injury was found to be simple blunt in nature. There is no opinion of Medical Jurist that the injury caused to PW-1 Rajaram at his finger was firearm injury. The accused-appellant was on regular bail during entire trial and there is no allegation that he breached the conditions, so also considering that hearing of the appeal may take considerable time, this Court is of the opinion that it is a fit case for suspending the sentences awarded to the accused-appellant during pendency of the instant appeal.

Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentences passed by the learned Additional Sessions Judge, Karauli in Sessions Case No.58/2018, CIS No.58/2018 vide judgment dated 27.10.2023 against the appellant-applicant **Phool Singh Son of Lohre Lal**, shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial

Judge for his appearance in this court on 27.02.2024 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

1. That he/she/they will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant(s) change(s) the place of residence, he/she/they will give in writing his/her/their changed address to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address, they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of the accused-applicant(s) in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant(s) was/were tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case the said accused applicant(s) does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

**(PRAVEER BHATNAGAR),J**

53-SURAJ KUMAR