

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, J.

Raja Saeed Akram Khan, J.

Criminal Revision No.6 of 2016

(Filed on 22.7.2016)

Mist. Hakim Jan, widow of Ali Dad Khan, r/o Rajpothi,
Tehsil & District Muzaffarabad.

....PETITIONER

VERSUS

1. Syed Waqar Hussain Gillani s/o Syed Iftikhar Hussain Gillani, r/o Rajpothi, Tehsil & District Muzaffarabad.
2. Raja Ashiq Hussain s/o Raja Muhammad Kabir Khan, r/o Rajpothi, Tehsil & District Muzaffarabad.

....RESPONDENTS

3. State through Advocate-General of Azad Jammu & Kashmir, Muzaffarabad.

....PROFORMA-RESPONDENT

(On revision from the order of the Shariat Court dated
6.6.2016 in criminal Misc. Nos. 312 of 2013 and 422 of
2014)

FOR THE PETITIONER:	Raja Ibrar Hussain, Advocate.
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FOR RESPONDENTS NO.1 & 2	Kh. Attaullah Chak, Advocate.
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FOR THE STATE:	Mr. Raza Ali Khan, Advocate-General.
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Date of hearing: 5.12.2016.

JUDGMENT:

Raja Saeed Akram Khan, J.— This criminal revision petition has been directed against the order passed by the Shariat Court on 6.6.2016, whereby, the bail has been granted to convict-respondents No. 1 and 2, herein.

2. The facts arising from this revision petition are that on a written report made by *Mst. Hakim Jan*, complainant-petitioner, herein, a case under sections 302 and 34, A.P.C., was registered against the unknown persons at Police Station Danna, on 6.10.2011. During the investigation, the accused-respondent, herein, were apprehended on 14.1.2012 and after completion of the investigation, a challan in the offences under sections 302, 34, 458, 337-A, F (1), A.P.C., and section 20 of the Offences Against Property (Enforcement of Hudood) Act, 1985, and 13 of the Pakistan Arms Ordinance, 1965, was filed in the

District Criminal Court, Muzaffarabad which was entrusted to the Additional District Criminal Court, Muzaffarabad for hearing and disposal under law. The trial Court after conclusion of the trial, vide judgment dated 10.4.2013, convicted and awarded sentence of 10 years' rigorous imprisonment to the convict-respondents, herein, Syed Waqar Gillani and Raja Aashiq Hussain, in the offences under sections 302 (c)/34, A.P.C. The convict-respondents, herein, were also convicted and awarded sentence to one year's rigorous imprisonment along with fine of Rs. 3000/- each under section 458, A.P.C. The convict-respondents, herein, were further sentenced to 3 years' rigorous imprisonment along with fine of Rs. 5000/- each under section 20 of the Offences Against Property, (Enforcement of Hudood) Act, 1985, and in case of non-payment of fine, the convict-respondents, herein, were ordered to undergo 6 months' simple imprisonment, while they were acquitted of the

charge in the offences under section 337-A,F(1) and the case to the extent of offence under 13 of the Pakistan Arms Ordinance, 1965, was dismissed. The trial Court also extended the benefit of section 382-B, Cr.P.C., to the convict-respondents, herein. It was also ordered that all the sentences shall run concurrently. Feeling aggrieved, the complainant-appellant, herein, filed an appeal before the learned Shariat Court for enhancement of the sentence, whereas, the convict-respondents also filed an appeal for acquittal before the Shariat Court which are awaiting disposal. The convict-respondents filed applications for suspension of the sentence and grant of bail on the ground of statutory delay in disposal of the appeals. The learned Shariat Court vide judgment dated 6.6.2016, accepted the applications and suspended the sentences awarded to the convicts on the basis of statutory delay of deciding the appeals within a stipulated period. Hence, this revision petition.

3. Raja Ibrar Hussain, Advocate, the learned counsel for the complainant-petitioner, argued that the judgment passed by the learned Shariat Court is against law and the facts of the case which is not sustainable in the eye of law. He submitted that the learned Shariat Court while suspending the sentences awarded to the convicts has not applied its judicious mind. He further submitted that the prosecution has succeeded to prove its case beyond the reasonable doubt. The learned Shariat Court while suspending the sentence awarded to the convicts has not taken into account that the convicts are liable to be awarded the capital punishment in view of the evidence brought on record. He submitted that the complainant-petitioner, herein, filed appeal before the learned Shariat Court for enhancement of the sentence which is subjudice before the learned Shariat Court since, 2013. He maintained that the delay caused in concluding the trial was not due to the fault of the prosecution, therefore,

there was no justification to suspend the sentences and extend the concession of bail to the convicts on statutory grounds. The learned Shariat Court has also not taken into account the overwhelming evidence available on record against the convict-respondents, herein, while delivering the impugned judgment. The convict-respondents actively participated in the occurrence and a specific role has been attributed to them. The learned counsel lastly argued that the appeal filed by the convict-respondents before the learned Shariat Court was hopelessly time-barred but this aspect of the case has been skipped from the notice of the learned Shariat Court.

4. Conversely, Kh. Attaullah Chak, Advocate, the learned counsel for the convict-respondents, strongly opposed the arguments addressed by the learned counsel for the complainant-petitioner, herein. He submitted that the Shariat Court has rightly exercised its

discretion while suspending the sentence awarded to the convict-respondents under section 426, Cr.P.C., as the appeal of the convict-respondents has not been decided within a stipulated period. He argued that the statutory right had accrued in favour of the convict-respondents which cannot be denied. He further argued that the case was adjourned more than 40 occasions due to the fault of the complainant-petitioner. He submitted that the substantial part of the sentence has already been served by the convict-respondents, therefore, the learned Shariat Court has not committed any illegality while suspending the sentence of the convict-respondents. He further submitted that the appeal filed by the complainant-petitioner before the learned Shariat Court was well within time. He contended that under section 25 of the Islamic Penal Laws, (Enforcement) Act, 1974, the limitation for filing the appeal before the Shariat Court is 60 days. The learned counsel lastly argued that as the

convict-respondents are not hardened and desperate criminal, therefore, the appellate Court has rightly exercised its discretion while releasing the convict-respondents on bail on the ground of statutory delay in disposal of the appeal.

5. Mr. Raza Ali Khan, the learned Advocate-General, has opted to adopt the arguments advanced by the learned counsel for the complainant-petitioner, herein.

6. We have considered the arguments advanced by the learned counsel for the parties, perused the impugned judgment passed by the Shariat Court and the record made available. The convict-respondents, herein, were convicted and sentenced to 10 years' rigorous imprisonment by the trial Court against which both the parties filed appeals before the learned Shariat Court which are pending before the Shariat Court. The convict-respondents moved applications before the learned Shariat Court for suspension of the

sentences and release them on bail on the statutory ground that the appeals before the learned Shariat Court are pending since 2013. The Division Bench of the Shariat Court, after hearing the parties, accepted the applications vide order dated 6.6.2016 and while suspending the sentences, ordered to release the convict-respondents on bail. The claim of the convict-respondents was that as the appeals have not been decided within the stipulated period, therefore, the case of the convict-respondents is covered under the amended provisions of section 426 (1-A) (c), Cr.P.C. To resolve the controversy, we intend to examine the parameters of section 1-A(c) of section 426, Cr.P.C., which reads as under:—

“1-A) An Appellate Court shall, except where it is of the opinion that the delay in the decision of appeal has been occasioned by an act or omission of the appellant or any other person acting on his behalf ,

order a convicted person to be released on bail who has been sentenced to;-

(a)

(b)

(c) imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction."

After going through the above said provisions, it can safely be said that until anything is brought on record to the contrary, the benefit of sub-section 1-A(c) cannot be withheld from a convicted person whose appeal has not been decided within the stipulated period as given in clause (c) of sub-section 1-A of section 426, Cr.P.C. The record reveals that the appeal of the convict-respondents has not been decided within a period of two years, therefore, they earned a right to move the appellate Court for the suspension of their sentences. From the record,

it appears that the delay in hearing the appeal was not caused due to the negligence of the convict-respondents.

7. The learned Shariat Court has rightly exercised its discretion under section 426, Cr.P.C., while suspending the operation of the sentences awarded to the convict-respondents as the appeals filed by them against the conviction order are pending since 2013. However, this right is not absolute. In the appropriate cases, the appellate Court comes to the conclusion that the person seeking bail under the aforesaid provisions is a hardened, desperate or dangerous criminal bail can be refused. In the instant case the convict-respondents do not fall within the definition of hardened, desperate or dangerous criminal. They have already undergone the major portion of the sentences, therefore, the learned Shariat Court has committed no illegality while

suspending the operation of the sentences awarded to the convict-respondents. In this regard, reliance can be made to the case reported as *Habib-ur-Rehman Chaughtaie vs. Habib-ur-Rehman & another* [2013 PSC (Cri.) 725], wherein it has been held as under:—

“8. The learned counsel for the appellant has heavily relied upon a judgment of this Court titled *Shaukat Ali vs. The State and another* [Criminal Appal No. 7 of 2012, decided on 7.8.2012]. We have thoroughly examined the supra judgment and observe that the facts of the case in hand are different and distinguishable from the case referred to and relied by the learned counsel for the appellant. In the referred case, the accused had acted in a desperate manner in the result of which three innocent persons were murdered on spot. We have observed earlier that despite the fact that even if the statutory period has elapsed, the convict-respondent cannot claim the bail as a matter of right. Each criminal case has

to be decided on its peculiar facts. In the case in hand, it is not denied by the other side that the statutory period of two years had completed and it is also reflected from the order of the Shariat Court that there is no possibility of the fixation of the appeal for hearing in near future. When there is no attribution to the convict-respondent for the delay in fixation of the appeal, he cannot be deprived of the benefit accrued to him under the statutory provisions.”

8. The learned counsel for the complainant-petitioner argued that the appeal filed by the convict-respondents before the learned Shariat Court was time-barred as the same was beyond the prescribed period of limitation. According to him, the limitation for filing of the appeal before the Shariat Court against the judgment of the District Criminal Court is 30 days. We have gone through the record and the provisions dealing with the limitation. The appeal in the Shariat Court has

been filed under section 25 of the Azad Jammu
 hm& Kashmir Islamic Penal Laws, (Enforcement)
 Act, 1974, hence, the limitation provided in the
 special law will be applicable. According to the
 settled law, the general law in which the
 limitation is provided otherwise cannot be given
 preference over the special law under which the
 appeal has been filed. Therefore, the argument
 of the learned counsel for the complainant in
 this regard is misconceived, hence, stands
 repelled.

In the light of what has been discussed
 above, we are of the opinion that no illegality
 has been committed by the Shariat Court while
 releasing the convict-respondents on bail,
 hence, finding no force in this appeal, it is
 hereby dismissed.

Mirpur.

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JUDGE

JUDGE