IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL MISC. No. OF 2023
[Application for suspension of the impugned judgments of Shariat Appellate Bench of the High Court and Additional District Criminal Court dated 03.08.2023 & 14.12.2018]

Afaan Afzal s/o Muhammad Afzal caste Sudhan r/o Jandali Tehsil Rawalakot District Poonch, Azad Jammu and Kashmir.

...Applicant-petitioner

VERSUS

State through Advocate-General, Muzaffarabad and another.

...Respondents

Appearances:

For the Applicant/ petitioner:	Raja Sajjad Ahmed Khan, Advocate
For the State:	Raja Mazhar Waheed, Addl. Advocate-General.
For the Complainant:	_____
Date of hearing:	22.08.2023

ORDER:

Raza Ali Khan, ACJ:- This miscellaneous application for interim relief has been preferred for suspension of the impugned judgments of the Shariat Appellate Bench of the High Court dated 03.08.2023 and Additional District Criminal Court, Rawalakot, dated 14.12.2018, during the pendency of appeal in the registry office.

2. Facts shortly stated are that a case in the offences under section 337/G, APC was registered against the applicant-petitioner. Later on, the victim scummed to the injuries, whereupon, section 320/APC was also added. The challan was presented in the Court of Competent Jurisdiction. At the conclusion of the trial, the learned Additional District Criminal Court, Rawalakot, convicted the petitioner and awarded him the sentence of Diyat to the tune of Rs. 20, 55, 936 under section 320-APC along-with six months simple imprisonment. He was further directed to pay Diyat within two years in eight equal instalments payable after every three months and till the payment of Diyat, he shall be detained in judicial lockup. He was also given the benefit of section 382-B, Cr.PC vide judgment dated 14.12.2018. The applicant-petitioner, feeling aggrieved, filed an appeal before the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High Court*). The learned High Court through the impugned judgment dated 03.08.2023, has dismissed the appeal and the convict-applicant, who was on bail, has been ordered to be arrested and sent to jail till the payment of Diyat.

3. Raja Sajjad Ahmed Khan, the learned counsel for the applicant-petitioner submitted that the impugned judgment of the High Court is not in accordance with law and

the facts of the case. He submitted that the applicant-petitioner was on bail before the judgment of the High Court, however, the learned High Court while upholding the decision of the trial Court, has again ordered for the arrest of the applicant-petitioner which is against the fundamental rights and also against the tenants set by this Court in the judgment reported as *Abdul Ghafoor vs. Muhammad Ajaib Khan and another* [2007 PCr.LJ 1387], therefore, it is in the interest of justice to suspend the judgments of both the Courts below and while accepting the instant application the applicant-petitioner may be released on bail.

4. While going through the record in the light of the arguments advanced by the learned counsel for the petitioner, I feel persuaded to abstain from recording any finding or entering into any discussion on the merits of the case as the same would amount to embark upon the controversy which has still to be adjudged while hearing the appeal filed by the convict-petitioner. It transpires from the record that the applicant-petitioner has been awarded the sentence of Diyat to the tune of Rs. 20,55,936 under section 320-APC along-with six months simple imprisonment. The learned trial Court has also fixed the period for payment of Diayt amount as two years in eight equal instalments, however, on appeal before the High Court, the learned High Court has upheld the judgment passed by the trial Court and also ordered for the arrest of the applicant-petitioner. The case before me is the suspension of the impugned judgments of the Courts below, however, it is only the matter of interim relief, therefore, embarking upon the merits of the case is not justified at this stage.

5. The period for payment of Diyat which can be granted to a convict is three years and the trial Court while recording the judgment has fixed the period of two years for payment of the Diyat amount in equal instalments, therefore,

in my view when already, the trial Court has fixed the instalments for payment of Diyat, the applicant-petitioner has to pay the same whether he is confined in jail or outside. There is also nothing on record through which it may appear that he has defaulted any of the instalments fixed by the trial Court, however, during the pendency of the appeal if any such eventuality comes on record, this Court has got vast powers to issue an appropriate order. Hence, I am persuaded to conclude that this is a suitable situation in which, the petitioner is entitled to be granted bail while suspending the conviction until the appeal reaches its ultimate resolution. It is important to highlight that the prescribed penalty of Diyat, if ultimately upheld by this Court, it shall be carried out accordingly, otherwise, the petitioner would be held in incarceration until the entire Diyat amount is settled and in the event of the convict's demise, the Diyat amount can also be recovered from his estate. The learned counsel for the applicant-petitioner has rightly placed reliance on the judgment of this Court reported as *Abdul Ghafoor vs. Muhammad Ajaib Khan and another*[1], wherein, the identical situation arose before this Court and the convict was released on bail while suspending the impugned judgments. The relevant portion of the judgment (supra) is reproduced hereunder for better appreciation.

> "The record reveals that the petitioner is in jail for the last over 6 years and if the period during which he has been kept under the custody is excluded from the period of sentence awarded to him by the trial Court, he has to remain in jail for another 2/3 yeaRs, Similarly the period for payment of Diyat which can be granted to a convict is three years and the trial Court while recording its judgment has failed to fix any period or order to keep him in jail for non-payment. We, therefore, are persuaded to hold that it is a fit case in which the petitioner deservers to be released on bail till final disposal of the appeal pending

[1] [2007 PCr.LJ 1387]

> adjudication in this Court. It may also be mentioned here that the punishment of Diyat, if finally confirmed by the Appellate Court is to be executed, failing which she convict has to remain in jail till the whole of the amount of Diyat is paid. It can even be recovered from his estate after the death of a convict.
> ' This application for suspension of the sentence is, therefore, allowed and the petitioner is ordered to be released on bail provided he furnishes a bail bond in the sum of Rs,10,00,000 along with a surety bond in the like amount to the satisfaction of any Magistrate First Class, Kotli. The sentence recorded against the petitioner shall remain suspended till final order in the original appeal is recorded by this Court"

In view of the above, while accepting this application, the sentence awarded to the convict-applicant is suspended till the final decision of appeal and he is ordered to be released on bail provided he furnishes a bail bond in the sum of Rs. 10,00,000/- (One million) consisting of two sureties in the like amount to the satisfaction of any Magistrate First Class Rawalakot.

JUDGE

Muzaffarabad,
22.08.2023