

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PANEL CODE

Date of Decision: 11th November, 2008

CRL.M.B. No. 1747/2007 in CRL.A. No. 828/2007

DANISH

Petitioner
Through : Mr. Mohd. Nasir, Advocate with
Mr. Mashi Alam, Advocate.

Versus

THE STATE (DELHI ADMN.) DELHI Respondent
Through : Mr. Navin Sharma, APP for State.

Veena Birbal, J. (ORAL)

Present is an application on behalf of appellant Danish seeking suspension of sentence of imprisonment and release on bail during the pendency of the appeal. Counsel for appellant submits that present appellant along with Navi Hassan and Khalil (i.e. appellants in Crl.A. No. 802/2007) were convicted under Section 394/34 IPC in SC No. 18/2003 by learned ASJ. Delhi. It is submitted that present appellant and co-accused Navi Hassan are also individually convicted under Section 397 IPC. It is submitted that in an appeal filed by Navi Hassan and Khalil i.e. in Crl. A. No. 802/2007, this Court vide order dated 8.4.2008 has suspended their sentence and admitted both of them to bail during the pendency of their appeal. It is submitted that there is no recovery from present appellant and as per prosecution case his role is less serious as compared to his aforesaid two associates as such his sentence be also suspended during the pendency of present appeal. Learned counsel for State has opposed the application strenuously. It is submitted that sentence of other two co-accused persons i.e. appellants in Crl. A. No. 802/2007, has been suspended as they had already undergone a sentence of about 5 years out of 7 years and the court was of the view that by the time appeal would come up for hearing, they would complete their sentences. It is submitted that appellant has only undergone sentence of 16 months out of 7 years and offence committed by him is serious as such he is not entitled for suspension of sentence at this stage. I have considered the submissions made and perused the record. I have perused the bail order dated 8th April, 2008 on which the counsel for appellant has relied for suspension of sentence. The same shows that appellants therein had undergone substantial sentence i.e. 5 years out of 7 years, whereas the present appellant has only undergone sentence of 16 months as during the

trial, he remained on bail. Perusal of evidence shows complainant has deposed in detail as to how the robbery was committed by the appellant along with his associates. She has also identified him in evidence. It has also come in the evidence that present appellant used knife at the time of incident. It has also come in the evidence that present appellant along with co-accused had left the spot with jewellery after tightening hands and legs of complainant and her daughter. Considering the totality, the application for suspension of sentence is rejected at this stage.

Sd./-
VEENA BIRBAL, J.

NOVEMBER 11, 2008