

GAHC040009882023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : IA(Crl)/44/2023

Nima Tsering Bapu
Age: 26
Occupation :
Address:S/o Shri Tashi Tsering Bapu
Permanent Resident of Munna Camp
Dirang
PO/PS Dirang
District West Kameng
Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Age: 0
Occupation :
Address:Represented through its Public Prosecutor.

Advocate for : Muk Pertin Senior Advocate

Advocate for : P P of AP appearing for THE STATE OF AP and Anr.

Crl.A./24/2023

Nima Tsering Bapu
S/o Shri Tashi Tsering Bapu,
Permanent Resident of Munna Camp, Dirang, PO/PS Dirang, District West Kameng,
Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.

Represented through its Public Prosecutor. 2:K. Karbak (Informant)

Age: 0

Occupation :

H/C

Bomdila Police Station

West Kameng District

Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 01.08.2023

Heard Ms T. Y. Bhutia, the learned counsel for the petitioner and Mr. J. Tsering, the learned Public Prosecutor for the State respondent.

2. This is an application under Section 389(1) of the Cr.P.C for suspension of order of sentence date 15.06.2023, passed by the learned Special Judge (NDPS), Bomdila, East Kameng District, whereby, the convict Shri Tashi Bapu was convicted under Section 21(a)/27(a)/20(b)(ii)(A)/27A of the NDPS Act and was sentence to undergo rigorous imprisonment for 1 year along with fine of

Rs.10,000/- for convicted under Section 21(a), rigorous imprisonment for 1 year with fine of Rs. 10,000/- for 27(a), rigorous imprisonment for 1 year along fine of Rs.10,000/- for 20(b)(ii)(A) of NDPS Act and rigorous imprisonment for 10 years along with fine of Rs.1,00,000/-(One Lakh Only) for the offence punishable under Section 27A of the NDPS Act and to undergo simple imprisonment for 2 months in addition to the sentences imposed, in the event of failure of payment of fine.

3. It is submitted by the learned counsel for the petitioner that there is every chance of succeeding in the connected appeal and the learned Special Judge has passed the order without considering the fact that there is total non-offence of Section 50 of the NDPS Act. More so, there is also no compliance of Section 42 of the NDPS Act. Beside without receiving the FSL report, the learned Special Judge passed the judgement and order convicting, Shri Tashi Bapu. Further, it is submitted that the convict was also sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs.1,00,000/-(One Lakh Only) for the offence punishable under Section 27A of the NDPS Act, but it is seen that the person whom he is alleged to have been harbouring i.e. the co-accused Deepjyoti Patra has already been acquitted from this case. Thus, here it is seen that the judgment passed by the learned Special Judge is not tenable under the eye of law and there is every chance of succeeding in the appeal.

4. Further, it is submitted that the accused is permanent resident of address mention and hence, there is no chance of absconding, if he allowed to go on bail suspending the sentenced imposed on him. It is further submitted that the accused/convict, was on bail during the entire trail and he never jumped over any conditions of bail during trial.

5. In this context, the learned Public Prosecutor Mr. J. Tsering has submitted that from the statements of the PWs, it is very evident that there was non-compliance 52 of the NDPS Act. And the seizer list was not prepared as per the proviso of Section 52 A of the NDPS Act. Further, it is submitted that the only independent witness i.e. PW-4 also did not support the prosecution case. However, it is submitted it cannot be a total non-compliance of Section 42 of NDPS Act. He further placed reliance on decision of the Hon'ble Apex Court passed in Criminal Appeal No. 1443/2023, **Simarnjit Singh Vs. State of Punjab**, and para "9" and "10" are read as under;

*"9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of **Mohanla**. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.*

10. Hence, the case of prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar s the present appellant is concerned and quash his conviction and sentence."

6. Considering the submissions made by the learned counsel for both the sides and also considering the evidence on records and other aspect of case, basically non-compliance of Section 52A of NDPS Act as well as inconsistency of deposition of the witnesses. Further, also considering the fact that the accused/convict did not jump over the bail condition while he was in bail during his entire trial. Considering this circumstances of this case, I hereby find it prudent to suspend his sentence passed by the learned Special Judge (NDPS), Bomdila dated 15.06.2023 till final disposal of the appeal.

7. And accordingly, the accused Shri Tashi Bapu shall be allowed to go on bail on furnishing a bail bond of Rs.20,000/- with a surety of like amount to the satisfaction of learned Special Judge (NDPS), Bomdila under following conditions.

- 1) The accused shall appear before the I.O as and when called for.
- 2) The accused shall not hamper and temper with the evidence in whatsoever manner.
- 3) The accused shall not leave the jurisdiction of Special Judge (NDPS), Bomdila, without prior permission.
- 4) If any of the conditions is violated, this bail will stand cancelled.

With the above observation, the present I. A. stands disposed of.

JUDGE

Comparing Assistant