

GAHC040015722022



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

Case No. : IA(Crl) 66/2022

1:Deepjyoti Patra
S/o Shri B.R Patra
resident of APST Colony
Bomdila
P.o and P.s. Bomdila
District West Kameng District
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP
through the Public Prosecutor
Arunachal Pradesh

Advocate for the Petitioner : T Tayeng
Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 04-01-2023

Heard Mr. T. Tayeng, learned counsel for the applicant. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 389 of the Code of Criminal Procedure for suspension of sentence and realization of fine during the pendency of the proceeding.

3. It is to be mentioned here that the present applicant, as an appellant, preferred an appeal, being CrI. A./41/2022, against the judgment and sentence dated 12.12.2022, passed by the learned Special Judge, NDPS Act, Bomdila, West Kameng, in NDPS Case No. 07/2021, convicting the present accused applicant to suffer rigorous imprisonment for 3 (three) years and 6 (six) months along with a fine of Rs. 50,000/- (Rupees fifty thousand) only.

4. It is submitted by Mr. T. Tayeng, learned counsel for the applicant, that on 08.05.2020, on the basis of the secret information from the reliable source, S.I. Shri C. R. Dev intercepted one car at welcome gate near Bomdila and arrested the present accused/applicant, along with one Shri Norbu Monpa, and, thereafter, on the basis of the disclosure statement made by the present accused/applicant along with other, the I.O. recovered suspected narcotic drugs (heroin) along with 12.5 grams of cannabis from the said car and accordingly,

an F.I.R. was lodged, which was registered as Bomdila P.S. Case No. 24/2020, under Sections 21(b)/27/27(A)/29 of the NDPS Act. After recording the statement of the witnesses and on completion of the investigation, the I.O. laid Charge-Sheet against 4 (four) numbers of accused persons including the present accused/applicant. The learned Special Judge, NDPS Act, Bomdila, West Kameng, after framing of charge against the present accused/applicant and on completion of the trial, convicted the present applicant under Section 21 (b) of the NDPS Act and thereby sentenced him to undergo rigorous imprisonment for 3 (three) years and 6 (six) months along with a fine of Rs. 50,000/- (Rupees fifty thousand) only.

5. Further it is submitted by the learned counsel for the applicant that, while passing the impugned judgment of conviction and sentence, the learned Special Judge, NDPS Act, Bomdila, West Kameng, failed to consider the fact that the I.O., at the time of seizure and arrest of the accused person, did not comply with the mandatory provision of Section 42 of the NDPS Act and it is considered that only Section 43 of the NDPS Act is applicable as the vehicle was intercepted in the public place. However, it is held by the learned Special Judge, NDPS Act, Bomdila, West Kameng, that there are no lapses or negligence on the part of the I.O. during the search and seizure of the contraband substance. Accordingly, it is submitted that the learned Special Judge, NDPS Act, Bomdila, West Kameng, failed to consider that the vehicle, which was intercepted by the I.O., was a private vehicle and not a public conveyance and there is no material in the record that it was a public conveyance and hence, the application of Section 42 of the NDPS Act is mandatory in this case. Accordingly, there is every chance of acquittal of the present applicant. Further, non-compliance of the

mandatory provision of Sections 42(1) & 42(2) of the NDPS Act will vitiate the entire trial and there is every chance of acquittal of the present applicant.

6. It is also submitted by the learned counsel for the applicant that the accused/applicant is a permanent resident of his addressed locality and as such, there is no chance for absconding of the present applicant. He will abide by all terms and conditions as may be imposed by this Court if he is allowed to go on regular bail till disposal of the connected appeal, being CrI. A./41/2022. Further, the applicant has never misused his bail conditions even during the course of trial and he remained present before the Court of learned Special Judge, NDPS Act, Bomdila, West Kameng, during the entire trial. And, accordingly, it is prayed for suspension of sentence and to allow the present accused/applicant to go on bail till disposal of the appeal.

7. In this context, Mr. J. Tsering, the learned Additional Public Prosecutor, has submitted that considering the nature of the offence and the term of the sentence passed by the learned Special Judge, NDPS Act, Bomdila, West Kameng, the prayer for suspension of sentence and for bail may be considered by this Court at this stage.

8. After hearing the submissions of learned counsels for both sides and also considering the entire aspects of the case, I find it appropriate to allow this interlocutory application. Accordingly, the conviction and execution of sentence and realization of fine in connection with judgment dated 30.11.2022, and order of sentences, dated 12.12.2022, passed by the learned Special Judge, NDPS

Act, Bomdila, West Kameng, in NDPS Case No. 07/2021, is hereby suspended till disposal of the main appeal, being CrI. A./41/2022.

9. Consequently, the applicant, namely, Shri Deepjyoti Patra, is enlarged on bail on his furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act, Bomdila, West Kameng, with a condition that he will not leave the jurisdiction of learned Special Judge, NDPS Act, Bomdila, without due permission.

10. In terms of above, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant