

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**MC(Crl.A.) No. 13 of 2022 with
Crl.A. No. 9 of 2022 with
MC(Crl.A.) No. 1 of 2024**

Lalchaamrem

.....Appellant/s

- Versus -

State of Manipur

.... Respondent/s

**BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

Order

08.04.2024

[1] Heard Mr. Serto T Kom, learned counsel along with Mr. Karung H Kom, learned counsel for the appellant and Mr. Y. Ashang, learned PP for the State respondent.

[2] The appellant was convicted under Section 21 (b) of the NDPS Act by the Ld. Special Judge (NDPS), Churachandpur vide judgment and order dated 04.07.2022 in Special Trial No. 11 of 2020 and vide order dated 04.07.2022, the appellant was sentenced to undergo 4 (four) years of rigorous imprisonment along with a fine of Rs. 25,000/- (Rupees twenty five thousand).

[3] The order of conviction and sentence dated 04.07.2022 passed by the Ld. Special Judge (NDPS), Churachandpur is challenged before this Court by way of Crl.A. No. 9 of 2022 along with an application

being MC(Crl.A.) No. 13 of 2022 for suspending the sentence under Section 389(1) of CrPC.

[4] When the matter was taken up, this Court proposed to dispose of the appeal itself and the application for suspension of sentence was kept pending. However, due to the compelling reasons, the appeal could not be disposed of within a short period.

[5] Learned PP submits that the appeal involves the interpretation of Section 52A of the NDPS Act and on 02.04.2024, when the matter was taken up as hearing as part heard item, Mr. Y. Ashang, learned PP drew the attention of this Court that there are conflicting decisions of the Hon'ble Supreme Court with respect to interpretation of Section 52A of NDPS Act and the matter will take some time.

[6] In the circumstances, this Court is inclined to take up the issue of suspension of sentence.

[7] Mr. Serto T Kom, learned counsel for the appellant, submits that from the date of conviction and sentence i.e. 04.07.2022 and after setting off a period of 3 (three) months already undergone by the appellant as during the trial, as on 04.04.2024, the appellant has undergone more than 2 (two) years of sentence which is half of 4 (four) years of total sentence by the Ld. Special Court. He submits that in various decisions of the Hon'ble Supreme Court in the case of (i) **Saudan Singh vs. State of UP** reported as **21 SCC Online SC 3259**, para 7 and (ii) **Dinesh Kumar Sinha vs. State of Jharkhand** reported as **(2009) 6 SCC 628**, para 4 held that the

Court can consider for suspension of sentence after the convict has undergone 50% of the total sentence awarded by the Trial Court.

[8] It is submitted that in the present case, the appellant has undergone 50% of the total 4 (four) years of sentence awarded by the Ld. Special Court. The appellant is female of 62 years as on date and there is no possibility of her absconding during the pendency of the present appeal. It is also pointed out that in the case of **Dadu Alias Tulsidas vs. State of Maharashtra** reported as **(2000) 8 SCC 437**, the Hon'ble Supreme Court held that Section 32A of the NDPS Act which restricts the power of the Court for suspension of sentence is unconstitutional and Mr. Serto T Kom, learned counsel for the appellant, submits that this Court can exercise the power of suspension of sentence under Section 389 of CrPC. Reference is made to the decision of **Bhagwan Rama Shinde Gosai & Ors. vs. State of Gujarat** reported as **(1999) 4 SCC 421**, para 3 held that when a person is sentence for a fixed period of sentence, the Court may liberally consider suspension of sentence and in the similar case, vide order dated 31.05.2019 passed by this Court in Crl.A. No. 11 of 2018, suspended the sentence of person facing conviction under NDPS Act.

[9] Mr. Y. Ashang, learned PP, draws the attention of this Court to the observation made by the Hon'ble Supreme Court in the case of **Dadu (Supra)** that while considering suspension of sentence under NDPS Act, the condition as stipulated out under Section 37 of the Act has to be complied and submits that this Court may pass appropriate order.

[10] Considering the peculiar facts of the present case, this Court has perused the materials on record and the decisions cited at bar. It is seen that the appellant who is lady of 62 years has undergone 50% of 4 (four) years of sentence awarded by the Trial Court and the appeal will take some time for considering the conflicting views of the Hon'ble Supreme Court with respect to Section 52A of the NDPS Act.

[11] In the circumstances, this Court is inclined to suspend the order of sentence dated 04.07.2022 passed by the Ld. Special Court, NDPS in Special Trial No. 11 of 2022 on the condition that the appellant shall furnish a personal bond of Rs. 1,00,000/- (Rupees one lakh) with surety (Government Employee) of like amount to the satisfaction of the Ld. Special Judge (NDPS), Churachandpur subject to the condition that she shall appear before Officer-in-Charge, Churachandpur Police Station on 15th of every month and she shall not leave the State of Manipur without the permission of this Court.

[12] With this observation, MC(Crl.A.) No. 13 of 2022 is allowed and disposed of.

[13] List the remaining cases on 08.05.2024 for continuation of hearing.

[14] Send a copy of this order to the Ld. Special Judge (NDPS), Churachandpur for information.

JUDGE

KH.
JOSHUA
MARING

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by KH. JOSHUA
MARING
Date: 2024.04.08
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Kh. Joshua Maring