Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

M.C. (Criminal Appeal) No.15 of 2019
Ref.:- Criminal Appeal No.20 of 2019

Mr. Lianpu Simte @ Tuankhanlian aged about 52 years S/o (L) N. Khampu Simte @ Vumzakham of Tangnuam Village, P.O. & P.S. Churachandpur, District-Churachandpur, Manipur – 795128.

……. *Applicant/s*

– Versus –

State of Manipur

…. *Respondent/s*

With M.C. (Criminal Appeal) No.11 of 2020
Ref.:- Criminal Appeal No.20 of 2019

Mr. Lianpu Simte @ Tuankhanlian aged about 52 years S/o (L) N. Khampu Simte @ Vumzakham of Tangnuam Village, P.O. & P.S. Churachandpur, District-Churachandpur, Manipur – 795128.

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BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicant/Appellant	:	Mr. Serto T. Kom, Advocate
For the Respondent/s	:	Mr. Y. Ashang, Ld. PP
Date of hearing	:	16.09.2020
Date of Judgment & Order	**:**	**07.12.2020**

JUDGMENT & ORDER
(CAV)

Miscellaneous Case No.15 of 2019 has been filed by the petitioner to suspend the execution of the sentence dated 05.09.2019 and judgment and order dated 28.08.2019 passed by the learned Special Judge (NDPS) (FTC), Manipur in Special Trial No.136 of 2018 under Section 21/29 of the ND & PS Act, 1985 and release him on bail under Section 389(1) of Cr.P.C. during the pendency of the appeal.

[2] Miscellaneous Case No.11 of 2020 has been filed to direct the respondent to give medical treatment to the petitioner outside the jail.

[3] The petitioner, who has been arrayed as first accused in Special Trial No.136 of 2018 on the file of the learned Special Judge (NDPS) (FTC), Manipur, was convicted under Section 21 and 29 of the ND & PS Act, 1985 and sentenced to undergo 11 years rigorous imprisonment with a fine of Rs.1,10,000/- within a period of 12 months from the date of passing the sentence, failing which he shall serve imprisonment of one year and one month. Challenging the conviction

and sentence imposed on him, the petitioner has filed the present appeal before this Court.

[4] The learned Trial Judge found the petitioner and one Biaklian Paite guilty of offences punishable under Sections 21 and 29 of the ND & PS Act and accordingly, convicted and sentenced the petitioner as stated supra. Similarly, the convict Biaklian Paite was sentenced to undergo 16 years rigorous imprisonment with a fine of Rs.1,60,000/- in default to undergo two years imprisonment. Pending appeal, the petitioner has filed the instant petition seeking suspension of sentence and release him on bail.

[5] The learned counsel for the petitioner submits that there is a *prima facie* case in favour of the petitioner for setting aside the execution of the impugned sentence dated 05.09.2019 and the judgment dated 28.08.2019 and as such the sentence being for a period of 11 years rigorous imprisonment, it is a fit case to invoke Section 389(1) Cr.P.C. to suspend the execution of the sentence and order to release the petitioner/convict on bail during the pendency of the appeal. During the course of arguments, the learned counsel for the petitioner/appellant also argued the merits of the appeal by

drawing the attention of the Court to the evidences of P.Ws. 2, 3 and 4 stating that their statements contradicts with the statement of P.W.1, who is the complainant.

[6] The learned counsel next submitted that the petitioner/appellant emphasize on the evidence of the recovery and seizure of heroin powder No.4 from Biaklian Paite/convict for the reason that if there is no evidence to prove that heroin powder No.4 was recovered and seized from the possession of Biaklian Paite, the only allegation against the petitioner/appellant that the said heroin powder was kept in his custody will not arise. In view of the above evidence led by the prosecution, which is found to be contradictory, the same cannot be relied upon to support the guilt of the petitioner against whom the only allegation is that he said heroin powder alleged to be seized from Biaklian Paite was kept in his custody for a commission of Rs.10,000/-.

[7] The learned Public Prosecutor submitted that under ND & PS Act, the petitioner is not entitled for suspension of sentence, as Section 32-A of the Act specifically states that notwithstanding anything contained in the Cr.P.C. or any other law for the time being

in force, but subject to the provisions of Section 33, no sentence awarded under this Act, other than Section 27, shall be suspended or remitted or committed. It is stated that, in the present case, the petitioner was convicted under Section 21 and 29 of the Act and as such, sentenced to undergo 11 years rigorous imprisonment, he is not entitled to suspension of sentence under Section 389 of Cr.P.C.

[8] This Court considered the submissions raised by both the counsels and also perused the materials available on record.

[9] According to the learned counsel for the petitioner, there are lot of infirmities in the impugned judgment and that the petitioner/appellant has got good case on merits in succeeding in the appeal. He would further submit that the petitioner/appellant has got family and he has to look after his family and also his health condition is very worst due to ailment.

[10] It is also the submission of the petitioner/appellant that the appeal would not be taken up for hearing in the near future and therefore, the appellant is entitled to suspension of sentence pending appeal and also release on bail. The petitioner/appellant undertakes to abide by the conditions imposed by this Court. He would submit

that in similar circumstances, this Court suspended the sentence and released the appellant therein on bail. In support, the learned counsel has produced the order dated 31.05.2019 passed in ***Criminal Appeal No.11 of 2018 (Mangte Indramani alias Soso Koireng v. State of Manipur).***

[11] The learned counsel for the petitioner urged that detention of the petitioner during pendency of the appeal is a severe punishment to all his family members and prays for suspension of sentence pending appeal.

[12] The decisions of the Hon'ble Supreme Court in the cases of **Bhagwan Rama Shinde Gosai and others v. State of Gujarat, reported in (1994) 4 SCC 421 and Dadu alias Tulsidas v. State of Maharashtra, reported in (2000) 8 SCC 437,** deals with suspension of sentence that when a convicted person is sentenced to a fixed period and when the convict files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances.

[13] In ***Bhagwan Rama Shinde Gosai,*** (supra), the Hon'ble Supreme Court held:

"When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted."

[14] In ***Dadu alias Tulsidar,*** (supra), the Hon'ble Apex Court held:

"25. Judged from any angle, the section insofar as it completely debars the appellate courts from the power to suspend the sentence awarded to a convict under the Act

cannot stand the test of constitutionality. Thus, Section 32-A insofar as it ousts the jurisdiction of the court to suspend the sentence awarded to a convict under the Act is unconstitutional. We are, therefore, of the opinion that the Allahabad High Court in Ram Charan case (1991) 9 LCD 160 (All) has correctly interpreted the law relating to the constitutional validity of the section and the judgment of the Gujarat High Court in Ishwar Singh M. Rajput case (1990) 2 Guj LR 1365 cannot be held to be good law."

[15] Thus, the prayer for suspension of sentence should be considered liberally unless there is any statutory restriction. Further, Section 32-A of ND & PS Act does not in any way affect the powers of the authorities to grant parole and a sentence awarded under the Act can be suspended by the appellate Court. Considering the facts and circumstances of the instant case and that the appeal would take substantial time to come up for final hearing, without expressing anything on the merits of the appeal and there are arguable points involved in the appeal, this Court finds that this is a fit case to suspend the sentence imposed on the petitioner pending appeal however, subject to stringent conditions.

[16] Miscellaneous Case No.11 of 2020 has been filed by the petitioner stating that he is suffering from type 2 diabetes mellitus and

that he had undergone surgery for ruptured tando Achilles right side on 27.05.2019 and at present the petitioner's blood sugar not being controlled by oral medication and his blood sugar level is high as 500 mg and therefore, the respondents may be directed to give medical treatment outside the jail.

[17] According to the petitioner, there is no facility for the treatment of the petitioner inside the jail by specialized Doctor and as such to save his life, he requires a proper treatment outside the jail by a specialized Doctor.

[18] On the other hand, the learned Public Prosecutor submitted that the petitioner has been provided with good medical treatment inside the jail.

[19] Taking into consideration of the submissions of the learned Public Prosecutor that in Jail, they are providing good medical treatment to the petitioner and in view of the sentence suspended pending appeal and released the petitioner on bail, this Court finds that there is no necessity to direct the respondent to give medical treatment to the petitioner outside the jail. Accordingly, Miscellaneous Case No.11 of 2020 is liable to be dismissed.

[20] Mr. Serto T. Kom further represented before this Court that the fine amount of Rs.1,10,000/- (Rupees one lakh ten thousand) as ordered by the Lemarned Special Judge, in the Special Trial Case No.136 of 2018 dated 05.09.2019, the petitioner/appellant has paid the said fine amount in T.R.5 (Fine Payment Receipt) dated 27.08.2020 before the Learned Special Judge and the same was recorded by the Special Court (ND&PS) (FTC), Manipur on 27.08.2020.

[21] Accordingly, the sentence imposed on the petitioner in Special Trial Case No.136 of 2018 dated 05.09.2019 on the file of the learned Special Judge, NDPS (FCT), Manipur alone is suspended, subject to the compliance of the following conditions by the petitioner:

a) *The petitioner is directed to be released on bail on his furnishing a personal bond for Rs.1 lakh (Rupees One Lakh) with two sureties in the like sum to the satisfaction of the learned Special Judge, NDPS (FTC), Manipur.*

b) *The petitioner, on his being enlarged on bail, is directed to report before the learned Special Judge, NDPS (FTC), Manipur on all Tuesdays and Fridays at 10.00 A.M. till the disposal of the appeal pending before this Court.*

c) *The petitioner shall also report before the Border Affairs Police Station on the first Monday of every month at 10.00 A.M.*

d) *The petitioner shall not indulge in any criminal activities during the period of suspension of sentence.*

e) *The Border Affairs Police is directed to monitor the petitioner and if they find the petitioner involved in any criminal activities, the Border Affairs Police is at liberty to bring it to the notice of this Court through the Public Prosecutor.*

f) *The petitioner shall not leave the jurisdiction of the Court.*

g) *In case of violation of any condition, the prosecution may ask for cancellation of bail.*

h) *It is made clear that this Court has not delve into the merits of the appeal.*

i) *Miscellaneous Case No.11 of 2020 is dismissed.*

JUDGE

FR/NFR

-Larson