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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. M.C. No.1385/2020 & Crl. M.A. No. 5920/2020
SURAJBHAN alias SARJUPetitioner
Through : Mr. Roshan Lal Saini, Advocate.

versus

STATERespondent
Through : Mr. Ajay Digpaul, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **15.05.2020**

[Court hearing convened *via* video-conferencing on account of COVID-19]

Crl. M.A. No. 5920/2020 in CRL. M.C. No. 1385/2020

1. The record shows that several orders were passed by this court for production of nominal roll concerning the petitioner. The last order, in this behalf, was passed on 06.05.2020 wherein the court recorded the following:

“1. The petitioner has been convicted for offence under Sections 40(2), 48A, 49B punishable under Section 51 of Wildlife (Protection) Act, 1972 in CC 01/2018 and has been sentenced as under:-

(i) 05 years of Simple Imprisonment with fine of Rs.25,000/- (Rs.Twenty Five Thousand only) for the offence under Section 40(2) punishable under Section 51(1) (proviso 2) of the Act and in default of payment of fine, he shall undergo further imprisonment of 01 month.

(ii) 05 years of simple imprisonment with fine of Rs.25,000/- (Rs.Twenty Five Thousand only) for the offence under Section

48-A of the Act, punishable under Section 51(1) (proviso 2) of the Act and in default of payment of fine, he shall undergo further imprisonment of 01 month.

(iii) 05 years of simple imprisonment with fine of Rs.10,000/- (Rs. Ten Thousand only) for the offence under Section 49-B of the Act, punishable under Section 51(1-A) of the Act and in default of payment of fine, he shall undergo further imprisonment of 01month.

2. On the first date of hearing i.e., 12.03.2020, ld. counsel for the petitioner submitted that the petitioner has already undergone more than the combined substantive substance and the default sentence. The petitioner's Nominal Roll however, indicates that the default sentence, in lieu of payment of fine imposed is yet to be served and also that he is undergoing 10 years sentence in RC No. 164/14 registered u/s 39/40(1)/44/49B Wild Life Act, 1972.

3. In view of the above, a clarification was sought from Jail authorities as to the exact period of imprisonment undergone by the petitioner. Despite subsequent orders calling for the fresh Nominal Roll stating the exact period of petitioner's custody, the same has not been made available.

4. Today, ld. counsel for the petitioner has referred to the order on sentence passed by the Trial Court wherein after noting the jail report dated 17.10.2018, it was directed that the petitioner be released forthwith, if not required in any other case.

5. List on 15.05.2020. Let digitized copy of the Trial Court record be requisitioned and made available on the next date of hearing.

6. In the meantime, reply, if any, be filed by the respondent before the next date of hearing with an advance copy thereof to the learned counsel for the petitioner.

7. A copy of this order along with previous orders be communicated electronically to the concerned Jail Superintendent forthwith to enable him to file a fresh Nominal Roll/jail report, indicating as to how much time has been spent by the petitioner in custody till date, in the present case."

2. Pursuant to the said order, the Jail Superintendent, Central Jail No.1, Tihar Jail, New Delhi has filed the nominal roll under the cover of his letter dated 14.05.2020.

3. A perusal of the nominal roll appended to the said letter clearly indicates that in the case in issue, the petitioner has already undergone the

substantive sentence awarded to him.

4. The nominal roll/record also reveals that the petitioner was required to pay a fine of Rs. 60,000/- failing which he is required to undergo default sentence of three months.

4.1 Furthermore, the nominal roll reveals that the petitioner has been convicted in one case and there are five other cases pending against him.

5. Mr. Digpaul, who appears on behalf of the State, does not dispute the aforesaid facts. In fact, Mr. Digpaul informs me that the production warrants in respect of the petitioner have been received in two cases from the Chief Judicial Magistrate, Nagpur, and, therefore, the petitioner's presence is required in that court on 16.06.2020.

6. For the sake of convenience, the relevant portion of the nominal roll is extracted hereunder:

“DETAILS OF SENTENCE UNDERGONE IN THE ABOVE NOTED CASE						
8.				YEAR(S)	MONTH(S)	DAY(S)
	UNDER-TRIAL		REGARDING J/C OF CONVICT AN ENDORSEMENT HAS BEEN MADE BY THE HON’BLE COURT ON THE CONVICTION WARRANT I.E. “THE JUDICIAL RECORD/JAIL REPORT DATED 17.10.2018 WITH RESPECT TO THE CUSTODY MORE THAN THE SENTENCE AWARDED. THEREFORE CONVICT SURAJBHAN @ SARJU BE RELEASED HENCEFORTH, IF NOT WANTED IN ANY OTHER CASE.”			
	CONVICT					
9.	TOTAL PERIOD UNDERGONE INLCUDING UNDER-TRIAL PERIOD LESS INTERIM BAIL (IF ANY) AS ON 22.01.2020			N/A		
10.	REMISSION EARNED			N/A		
11.	UNEXPIRED PORTION OF SENTENCE			HE IS ONLY REQUIRED TO SERVE THE SENTENCE IN DEFAULT OF PAYMENT OF FINE I.E RS.60,000 IMPOSED BY THE HON’BLE TRIAL COURT.		
12.	DETAILS OF OTHER CONVICTED CASES (IF ANY)			JUDICIAL CUSTODY		STATUS
	FIR NO.	U/S	P.S.	FROM	TO	

	ECTR/13/DZ/2013/AD/ (BKS) (CC04/15)	3/4 OF PMLA ACT 2002	ENFORCEMENT DIRECTORATE	19.12.15	11.09.19	Convicted on 11.09.19 for Aug (i.e. R.I. 04 Years) with fine Rs.10,000 & ID SI 10 DAYS
13.	DETAILS OF OTHER PENDING CASES IN WHICH ACCUSED IS IN J/C (AS UNDER-TRIAL)		FIR NO.	U/S	P.S.	STATUS
			1216/04 RCT 962/18	N/A	SIVANI, JABAL PUR, MP	PENDING
			RCC NO. 3324/13, C.R NO. 32/13	39 WILD LIFE ACT	STATE V/S MAMRU & ORS.	PENDING
			RCC NO.4479/13 CR NO. 32/15	3/35/40/4 9/51/52 FOREST ACT	NAGPUR	PENDING
			CRL. A.NO.283/16	STATE V/S SARJU @ SURAJ BHAN		PENDING
			RC NO.1204/04	N/A	SIVANI (MP)	PENDING"

7. I may also indicate that Mr. Digpaul has stated that insofar as the subject case [i.e. FIR No.155/2013] is concerned, since the petitioner has undergone the substantive sentence, if he is not in a position to pay the fine imposed upon him by the concerned court, the default sentence can be waived.

8. According to me, this also appears to be the position in law. There is nothing on record to suggest that the petitioner is in a position to pay the fine and that despite the necessary wherewithal, he chooses not to pay the fine imposed upon him by the concerned court.

9. Therefore, the captioned petition is disposed of with the following

directions

(i) In the subject case [i.e. FIR No.155/2013], the default sentence i.e. simple imprisonment of three months will stand waived in view of the fact that the petitioner has already undergone the substantive sentence.

(ii) Since the petitioner has been convicted in one case, as indicated above, and there are five other cases pending against him, the State will, in consonance with the production warrants issued by CJM, Nagpur in RCC No. 3324/13 and RCC 3044/13, present him in the concerned court on 16.06.2020.

(iii) The petitioner will, thus, if required, be incarcerated as per law in the Nagpur jail or whichever jail deemed fit by the concerned court.

(iv) In case there is any difficulty in transporting the petitioner to the concerned court on account of the Coronavirus pandemic, the State will have liberty to move this court for necessary directions.

10. The Registry is directed to transmit a copy of the order passed today electronically to the concerned Jail Superintendent for due compliance.

11. A copy of this order will also be transmitted electronically to both, counsel for the State as well as counsel for the petitioner.

RAJIV SHAKDHER, J

MAY 15, 2020/pmc/aj/kk

Click here to check corrigendum, if any