

06.07.2021
tkm/ct 30
sl no. 42

CRAN 3125 of 2019
in
C.R.A. 366 of 2019

In Re : An application under section 389(1) of the Cr.P.C
And

In re : Bijoy Barman appellant

Mr. Arindam Jana
..... for the appellant
Mr. M Sur
Mr. M Mahata
..... for the State

This is an application for suspension of sentence and grant of bail pending disposal of the appeal preferred by the appellant, who stood convicted for commission of offence punishable under section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act). By the judgment and order dated 29th May, 2019 passed by the learned Judge, Bench-I, City Sessions Court, Calcutta the petitioner was sentenced to suffer rigorous imprisonment for 10 years and also to pay fine of Rs. 1,00,000/-, in default, to suffer rigorous imprisonment for six months more.

Records reveal that the appeal was admitted by an order dated 5th August 2019. From the report of the Superintendent, Presidency Correctional Home it appears that till 25th June 2021, the total period of the appellant's detention is of 5 years 8 months and 16 days.

Mr. Jana, learned advocate appearing for the appellant submits that it would be explicit from the records that there is a dispute as regards the place of occurrence. From the deposition of PW5 it would appear that the place of occurrence was at 4/8, Brabourne Road, Kolkata - 700 001 which does not tally with the place of occurrence as stated by PW2. Though there were two seizure witnesses, only PW 5, namely, Biswajit Das was examined. The name of the seizure witness has, however, been stated to be Biswajit Roy by the PW2 during cross examination. The PW5 claimed to be a hawker, however, he could not produce any hawker licence and he was not a resident of the locality. Such infirmities and contradictions falsify the prosecution story and in view thereof, it cannot be said that the appellant has no chance of success in the appeal.

According to him the provisions of Sections 50 and 52-A of the NDPS Act have not been complied with during investigation. In support of his arguments, Mr. Jana has placed reliance upon the judgments delivered in the case of ***Union of India vs. Mohanlal & Anr*** reported in ***(2016)3 SCC 379*** and ***Vijay Pandey vs. State of Uttar Pradesh*** reported in ***2019 SCC OnLine SC 942***.

He submits that it would be explicit from the records that the petitioner had already undergone imprisonment for more than 5 years 6 months and the chance of the appeal being heard in the near future is also remote. In view thereof and taking into

consideration the present pandemic situation, the petitioner's sentence may be suspended and he may be enlarged on bail.

Placing reliance upon a judgment delivered in the case of ***Narcotics Control Bureau vs. Lokesh Chadha*** reported in **2021 SCC OnLine SC 178**, he argues where trial in a NDPS case has ended in an order of conviction, it cannot be said that this Court is deprived of its authority to suspend the sentence under Section 389(1) of the Code of Criminal Procedure.

Mr. Sur, learned Additional Public Prosecutor appearing for the State submits that the culpability of the appellant has been proved on the basis of the material evidence. The rigors of Section 37 of the NDPS Act would have to be met before the sentence of a convict is suspended and bail is granted. Mere passage of time cannot be a reason for suspension of such sentence. In support of such contention reliance has been placed upon a judgment delivered in the case of ***Union of India vs. Rattan Mallik @ Habul*** reported in **(2009) 2 SCC 624**.

The normal principle that a substantial period of detention has already been suffered during the pendency of the appeal, cannot be a ground to suspend the sentence and grant bail, in view of the stringent provisions of Section 37 of the NDPS Act. Such proposition is explicit from the judgments delivered in the case of ***Lokesh Chadha (supra)*** and in the case of ***Rattan Mallik @ Habul (supra)***.

We have considered the quality of evidence as recorded by the learned Trial Court. The expression '*reasonable grounds*' in Section 37 of the NDPS Act means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence and is not likely to commit any offence while on bail. Having regard to the materials which formed the basis of the order of conviction and considering the arguments advanced on behalf of the appellant, we do not find any compelling reason to suspend the sentence of the appellant and to grant him bail.

Accordingly, the application being CRAN 3125 of 2019, is dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Suvra Ghosh, J.)

(Tapabrata Chakraborty, J.)