

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11698 of 2022

David Masih
Vs.
Director General, Border Security Force & Ors.

Mr. Manjit Singh
Mr. Gaganjyot Singh
Mr. Biswajit Mal
... For the petitioner

Ms. Chandreyi Alam (Gupta)
Ms. Runu Mukherjee
... For Union of India

The petitioner while serving Border Security Force (in short “BSF”) at Bn HQ 137, Bn BSF, Patiram, Dakshin Dinajpur, was issued a charge sheet along with a co-accused Manish Kumar Ray. A General Security Force Court (in short “GSFC”) was constituted to hold the trial against the petitioner as also the said Manish Kumar Ray in respect of such charges. In the said GSFC held between 1st February, 2021 and 17th February, 2021, the petitioner was exonerated but Manish Kumar Ray was held guilty. The findings and the sentence passed by GSFC were sent for confirmation under the provisions of Section 108 of the Border Security Force Act, 1968 (hereinafter referred to as the “1968 Act”). The confirming authority instead of confirming the findings and the sentence remanded back the matter pursuant to which the GSFC again heard the matter afresh by taking additional evidence as permitted

under the 1968 Act. In the second round of proceedings before GSFC, the petitioner was held guilty. Manish Kumar Ray, the co-accused, was also held to be guilty. The findings and sentence of GSFC were subsequently confirmed.

The petitioner preferred an appeal under Section 117(2) of the 1968 Act challenging the findings and sentence given by GSFC. The appeal was despatched through post on 9th November, 2021 and has been received by the authority concerned on 12th November, 2021. The petitioner says that the appeal has since then been pending. The petitioner is now serving sentence of rigorous imprisonment of three years in civil prison as per the order of GSFC and is presently at Balurghat Correctional Home at District Dakshin Dinajpur, West Bengal. The petitioner says that during the pendency of the appeal, the authority concerned under Section 130 of the 1968 Act has empowered to suspend the sentence of imprisonment.

Neither the appeal has been heard nor the sentence against the petitioner has been suspended. Being aggrieved by such action on the part of the authorities, the petitioner has filed this writ petition. The petitioner says that this Court should pass necessary orders suspending the sentence as the appeal has been kept pending for about nine months.

The fact remains that the GSFC after holding a trial for the second time has passed an order. The findings and

sentence pronounced by the GSFC has been confirmed and the appeal filed by the petitioner is pending. At this stage, the writ Court cannot usurp the powers of the authority as empowered under the 1968 Act and grant bail to the petitioner in line with the provisions of Section 130 of the 1968 Act. The writ Court cannot also act as an Appellate Authority under the 1968 Act to hear out and dispose of the appeal. At the same time, the appeal, which is pending for nine months, has to be brought into a logical conclusion at the earliest. The Appellate Authority cannot keep the appeal pending for such a long period when, admittedly, the petitioner is in jail while serving the sentence.

In the aforesaid facts and circumstances, the Appellate Authority shall dispose of the petitioner's appeal received by the competent authority on 12th November, 2021 as expeditiously as possible, but not beyond two months from date by adhering to the legal provisions enumerated under the 1968 Act and rules framed thereunder.

The issue of suspension of sentence shall be considered by the Appellate Authority if such prayer is made by the petitioner before such authority, irrespective of the fact that the hearing of the appeal is pending.

The orders that may be passed in the appeal or while deciding the petitioner's prayer for suspension of sentence shall be communicated to the petitioner at the

Correctional Home wherein he is presently serving his sentence at the earliest.

I make it clear that I have not gone into the merits of the appeal or on suspension of sentence.

The parties, including the Appellate Authority, shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)