

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15013 of 2022
with
IA No. CAN 1 of 2022

Manish Kumar Ray
Vs.
The Union of India & Ors.

Mr. Abdur Rakib
Ms. Gitika Agarwal
... 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 David Masih. A General Security Force Court (in short “GSFC”) was constituted against the petitioner as also the said David Masih for trying the charges against them. In the said GSFC held between 1st February, 2021 and 17th February, 2021, the petitioner was held guilty in respect of one of the charges and was sentenced to 89 days rigorous imprisonment but David Masih was exonerated. The findings and the sentence pronounced 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”). At that time the petitioner was already serving the sentence pronounced by GSFC. The findings

and sentence of the GSFC was sent for confirmation before the authority concerned. The concerned authority had instead of confirming the findings and sentence, remanded back the entire matter before the GSFC for revisional proceedings. Pursuant to which the GSFC again heard the matter afresh between 15th June, 2021 and 21st June, 2021 by taking additional evidence as permitted under the 1968 Act. In the second round of proceedings against GSFC, the petitioner was held guilty. David Masih, the co-accused, was also held to be guilty.

The petitioner preferred a post confirmation appeal under Section 117(2) of the 1968 Act which is annexed at page 398 of the writ petition. 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 orders of GSFC. The petitioner says that during the pendency of the appeal, the authority concerned under Section 130 of the 1968 Act is 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 has also taken out an application, being CAN 1 of 2022, for suspension of sentence. 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 some time, 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 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.

In re: CAN 1 of 2022

The application for suspension of sentence, being CAN 1 of 2022, is disposed of without going into the merits of the same, by granting the petitioner leave to pray for suspension of sentence under Section 130 of the 1968 Act on the selfsame ground before the Competent Authority.

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

(Arindam Mukherjee, J.)