

09.06.2023
sayandeep
Sl. No. 03
Ct. No. 12

MAT 745 of 2023
With
IA No: CAN 01 of 2023

David Masih
-Versus-
Director General of BSF & Ors.

Mr. Manjit Singh
Mr. Ganganjyot Singh
Mr. Abhishek Bagal

.....for the appellant

Mrs. Chandreyi alam
Ms. Runu Mukherjee

.....for the UOI

The appellant is working as Assistant Sub-Inspector in service of BSF, Patiram, Dakshin Dinajpur. Charges were leveled against the appellant that he received money and allowed the smuggling of cattle to Bangladesh. The appellant was acquitted by General Security Force Court. The appellant was convicted and imposed the sentence of three years rigorous imprisonment. The statutory appeal filed by the appellant was dismissed. The appellant filed writ petition No. 6228 of 2023 challenging the order of the appeal as well as the conviction and sentence imposed on him. This Court admitted the writ petition and directed the Registry to list the matter for final hearing after completion of affidavits. The relief of suspension of sentence was not granted. The appellant has come with the present appeal for suspension of sentence.

Learned counsel appearing for the appellant made various submissions on merits,

The learned counsel appearing for the appellant submitted that pending writ petitions suspension of sentence could be granted and relied on three Judgments of **Ex. Ct. Mahadev vs. Director General, BSF & other, Civil Appeal No. 2606 of 2012 (Supreme Court, Judgment dated 14.06.2022 read with order dated 04.07.2016), Mahesh Prasad Singh vs. Union of India & Anr., WP(C) 7357 of 2011, C.M. No. 1668 of 2011 (Delhi high Court-Order dated 22.12.2011), Md. Ezhar Khan vs. Union of India 7 Anr. WP(C) 5622 of 2022 (Delhi High Court-Order dated 06.01.2023).**

Learned Counsel for the appellant further submits that the appellant had already undergone two years and one month imprisonment out of three years imprisonment. The learned counsel for the appellant further submits that unless suspension of sentence is granted, the writ petition itself become infructuous.

Learned counsel appearing for the respondent also made various averments on merits of the writ petition and submitted that appellant who is working in BSF which is in disciplined service has committed serious offence. The statutory appeal filed by the appellant was also dismissed. The suspension of sentence can be considered at the time of appeal before

the authorities as per Section 130 of the BSF Act. The appellant at this stage is not entitled for grant of suspension of sentence.

Learned counsel appearing for the respondents further submitted that the Judgments laid down by learned counsel appearing for the appellant, are not applicable to the facts of the case and prayed for dismissal of the case. She relied on the Judgment of **Kartar Singh vs. State of Punjab** reported in **(1994)3 SCC 569**.

It is seen from materials on record that the appellant had already undergone two years one month of imprisonment out of three years imprisonment. The contention of the learned counsel for the appellant that unless suspension of sentence is granted the writ petition itself will become infructuous has considerable force and is acceptable.

Keeping in view the quantum of sentence already undergone and the fact that hearing of writ petition shall take substantial time, this Court is inclined to suspend the sentence of applicant during the pendency of the petition.

In view of the above, the writ appeal is disposed of suspending the sentence awarded to the appellant on the following conditions:

Appellant shall be released on bail upon furnishing personal bond of Rs. 20,000/- with two

sureties of like amount each to the satisfaction of the appellate authority.

The appellant shall report to the appellate authority once in a week on every Monday before DIG, Sector Head Quarter, BSF, Amritsar and once in a month before the Commandant, BN HQ 137 Bn, BSF, Patiram District Dakshin Dinajpur-733158.

If any conditions are violated, the respondents shall take appropriate action in accordance with law.

The authorities are directed to act based on the server copy of this order.

The appeal and applications are disposed of accordingly.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)