

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1325-2023

DECIDED ON: 19.05.2023

SAJAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Pandat, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The present revision petition has been preferred against the order dated 28.04.2023 passed by Additional Sessions Judge-I, Kapurthala, whereby the application seeking suspension of sentence awarded to the petitioner has been dismissed.

2. Learned counsel for the petitioner has drawn attention of this Court to the verdict given by a larger Bench of the Apex Court rendered in the case of *Dadu @ Tulsidas vs. State of Maharashtra, 2004(4) R.C.R. (Criminal) 275*. The relevant extract of the judgement reads as under:-

23. In Ram Charan v. Union of India, 1991(9) LCD 160, the Allahabad High Court, while dealing with the question of the constitutional validity of Section 32A found that as the Section leaves to discretion to the Court in the matter of deciding, as to whether, after conviction the sentence deserves to be suspended or not without providing any guidelines regarding the early disposal of the appeal within a specified period, it suffers from arbitrariness and thus violative of mandate of Articles 14 and 21 of the Constitution. In the absence of right of suspending a sentence, the right of appeal conferred upon accused was termed to be a right of infructuous appeal. However, Gujarat High Court

in *Ishwarsingh M. Rajput v. State of Gujarat* [1990 (2) Gujarat Law Reporter 1365 :1991(2) Crimes 160] while dealing with the case relating to grant of parole to a convict under the Act found that [Section 32A](#) was Constitutionally valid. It was held:

"Further, the classification between the prisoners convicted under the Narcotics Act and the prisoners convicted under any other law, including [the Indian Penal Code](#) is reasonable one, it is with specific object to curb deterrently habit forming, booming and paying (beyond imagination) nefarious illegal activity in drug trafficking. Prisoners convicted under the Narcotics Act are class by themselves. Their activities affect the entire society and may, in some cases, be a death-blow to the persons, who become addicts. It is much more paying as it brings unimaginable easy riches. In this view of the matter, the temptation to the prisoner is too great to resist himself from indulging in same type of activity during the period, when he is temporarily released. In most of the cases, it would be difficult for him to leave that activity as it would not be easy for the prisoner to come out of the clutches of the gang, which operates in nefarious illegal activities. Hence, it cannot be said that [section 32A](#) violates [Article 14](#) of the Constitution on the ground that it makes unreasonable distinction between a prisoner convicted under the [Narcotic Act](#) and a prisoner convicted for any other offences."

24. Judged from any angle, the Section in so far as it completely debars the appellate courts from the power to suspend the sentence awarded to a convict under the Act cannot stand the test of constitutionality. Thus [Section 32A](#) in so far as it ousts the jurisdiction of the court to suspend the sentence awarded to a convict under the Act is unconstitutional. We are, therefore, of the opinion that Allahabad High Court in Ram Charan's case (*Supra*) has correctly interpreted the law relating to the

*constitutional validity of the Section and the judgment of Gujarat High Court in **Ishwarsingh M. Rajput's** case cannot be held to be good law.*

25. Despite holding that [Section 32A](#) is unconstitutional to the extent it affects the functioning of the criminal courts in the country, we are not declaring the whole of the section as unconstitutional in view of our finding that the Section, in so far as it takes away the right of the Executive to suspend, remit and commute the sentence, is valid and intra vires of the Constitution. The Declaration of [Section 32A](#) to be unconstitutional, in so far as it affects the functioning of the courts in the country, would not render the whole of the section invalid, the restriction imposed by the offending section being distinct and severable.

Holding [Section 32A](#) as void in so far as it takes away the right of the courts to suspend the sentence awarded to a convict under the Act, would neither entitle such convicts to ask for suspension of the sentence as a matter of right in all cases nor would it absolve the courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed under [Section 37](#) of the Act. [Section 37](#) of the Act provides:

*"37. Offences to be cognizable and non-bailable (1)
Notwithstanding anything contained in [the Code](#) of Criminal Procedure, 1973--*

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless--

i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) *The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.*

*This Court in **Union of India v. Ram Samujh & Anr.** [1999 (9) SCC 429] held that the jurisdiction of the court to grant bail is circumscribed by the aforesaid section of the Act. The bail can be granted and sentence suspended in a case where there are reasonable grounds for believing that the accused is not guilty of the offence for which convicted and he is not likely to commit any offence while on bail and during the period of suspension of the sentence. The Court further held:*

"The aforesaid section is incorporated to achieve the object as mentioned in the Statement of Objects and Reasons for introducing Bill No.125 of 1988 thus:

"Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985 the need to amend the law to further strengthen it, has been felt".

(emphasis supplied)

It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and

illegal profit involved. This Court, dealing with the contention with regard to punishment under the [NDPS Act](#), has succinctly observed about the adverse effect of such activities in [Durand Dillier v. Chief Secretary, Union Territory of Goa \[1990 \(1\) SCC 95\]](#) as under: (SCC p.104, para 24).

"24, With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the [NDPS Act](#) should not be released on bail during trial unless the mandatory conditions provided in [Section 37](#), namely,

- i) there are reasonable grounds for believing that the accused is not guilty of such offence; and*
 - ii) that he is not likely to commit any offence while on bail.*
- are satisfied."*

27. Under the circumstances the writ petitions are disposed of by holding that (1) [Section 32A](#) does not in any way affect the powers of the authorities to grant parole; (2) It is unconstitutional to the extent it takes away the right of the court

to suspend the sentence of a convict under the Act; (3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in [Section 37](#) of the Act as dealt with in this judgment.”

3. Learned counsel for the petitioner has contended that the afore-said proposition settled by the Apex Court has not been appreciated in the right earnest by Additional Sessions Judge-I, Kapurthala and, therefore, the impugned order dated 28.04.2023 is bad in the eyes of law.

4. Notice of motion.

5. On the asking of Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of respondent-State and who is also in consonance with the law settled by the Apex Court in the case of ***Dadu @ Tulsidas's case*** (supra), which duly empowers the lower Appellate Court to consider the case of the applicant for suspension of sentence, which in any case has been held to be unconstitutional in that judgment, otherwise filing of an appeal would be rendered infuctuous in the absence of power to suspend the sentence.

6. In the light of afore-said observation, the case is remanded back to the trial Court to decide the application of the applicant-petitioner afresh in the light of the law settled by the Apex Court in ***Dadu @ Tulsidas's case*** (supra) within a period of one week from the receipt of certified copy of this order.

7. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

19.05.2023

Sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>