

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 22 of 1984

**Santi Saha
-Vs-
The State of West Bengal**

For the Appellant : Mr. Ranadeb Sengupta
(Amicus Curiae)

For the State : Ms. Faria Hossain
Ms. Kanchan Roy

Heard on : 23.04.2024, 06.09.2024

Judgment on : 13.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 08.12.1983 passed by the Learned 2nd Judge, Special Court at Calcutta in G.R. No.2094/83 in case no.C/486 dated 21.07.1983 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act.
2. The prosecution case precisely stated that the appellant was carrying seven quintals of wheat which was seized at the crossing of Mahendra Goswami Lane and Ramtanu Bose Lane, at the Jorabagan P.S. The police officer was informed by the local people over telephone about the detention of the appellant and the wheat. The police officer went at the spot and as the

appellant could not show any permit or license for holding the wheat and the same was seized and the appellant was arrested.

3. After completion of investigation, the investigating officer of the case submitted charge-sheet against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 to which he pleaded not guilty and claimed to be tried.
4. In order to prove its case, the prosecution examined as many as 3 witnesses and exhibited certain documents.
5. Considered the submissions of the Learned Amicus Curiae representing the appellant as well as the Learned Advocate representing the State.
6. The appellant Santi Saha in reply to the question cited to him at the time of his examination under Section 313 of the Code of Criminal Procedure stated as follows:-

“Q2:- Seven quintals of wheat contained in seven bags were recovered from you and that have been taken into custody in your presence.

Ans:- Yes, having purchased there wheat from Howrah. I brought it to Calcutta for sale, and that was seized from the junction of Mahenda Godame Lane and Ramtanu Box Lane.”

7. The evidence of the prosecution witnesses cannot be ruled out to be untrue in the context of the appellant’s version as stated under Section 313 of the Code of Criminal Procedure.
8. In the decision of **Tarak Nath Keshari Vs. State of West Bengal¹**, the Hon’ble Apex Court held as follows:-

¹2023 SCC OnLine SC 605

“7. Heard learned counsel for the parties and perused the paper book. The fact that inspection of the shop of the appellant was carried out on 20.8.1985, hence the incident had taken place more than 37 years back. As was pointed out at the time of hearing, the appellant throughout remained on bail. Section 7(1)(a)(ii) of the EC Act under which the appellant has been convicted, provides as under:—

“7. Penalties - (1) If any person contravenes any order made under Section 3,-

(a) he shall be punishable,-

(i)

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;”

8. *A perusal of the aforesaid Section shows that the Court may, for adequate and special reasons, impose punishment less than the minimum prescribed in the Section. However, the fact remains that the offence in the case in hand was committed on 20.8.1985 and in terms of the Essential Commodities (Special Provisions) Amendment Act, 1981, the proviso was not in force on that date.*

9. *As far as the case of the appellant on merits is concerned, we do not find that any case is made out for interference in the concurrent findings of the facts recorded by all the courts below. It was found that the stock of mustard oil and vegetable oil found at the shop of the appellant was more than the permissible limit, hence, this was violative of para 3(1) of the West Bengal Pulses, Edible Oil (Dealers Licensing) Order, 1978.*

10. *However, still we find that a case is made out for grant of benefit of probation to the appellant for the reason that the offence was committed more than 37 years back and it was not pointed out at the time of hearing that the appellant was involved in any other offence. Before all the courts below, the appellant remained on bail. While entertaining his appeal, even this Court had granted him exemption from surrendering. Section 4 of the Probation of Offenders Act, 1958 has a non obstante clause. The same is extracted below:*

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under subsection (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

11. *Even if there is minimum sentence provided in Section 7 of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if minimum sentence is provided in the EC Act, 1955 the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958. Reference can be made to a judgment of this Court in Lakhvir Singh v. The State of Punjab.”*

9. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1983. The appellant to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 42 years.
10. The appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.10,000/- with two sureties to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.10,000/- within 90 days from the date of this order failing which he shall be called to serve out the sentence.
11. In view of the above discussions, the instant criminal appeal is dismissed.
12. I record my appreciation for the able assistance of Learned Advocate Mr. Ranadeb Sengupta, *Amicus Curiae* in disposing of this appeal.
13. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

14. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)