

Tarsem Singh Vs. Directorate of Revenue Intelligence

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Court : Delhi

Decided On : Feb-10-2014

Judge : V. K. Jain

Appellant : Tarsem Singh

Respondent : Directorate of Revenue Intelligence

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Order reserved on:

03. 02.2014 Date of Decision:

10. 02.2014 + Crl. Appeal 637/2013 TARSEM SINGH Through: Appellant Mr. Vishal Raj Sehijpal, Adv. Versus DIRECTORATE OF REVENUE INTELLIGENCE Respondent Through: Mr. Satish Aggarwala and Mr. Amish Aggarwala Advs. CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

Crl.M(B) No.994/2013 The case of the prosecution is that on 03.01.2009, a Tata Sumo vehicle was signaled and stopped, as the officials of DRI had information that narcotic drug was being carried in the said vehicle, but the driver, instead of stopping the vehicle accelerated its speed. The vehicle was then chased by the

DRI officials. After some time, all of a sudden, the said vehicle was stopped at G.T. Karnal Road and both the occupants of the vehicle, including the appellant, came out and tried to escape. The appellant was apprehended, whereas his companion managed to escape. On search of the vehicle, heroin weighing 7.896 kg was found concealed in it, in a specially created cavity. This is also the case of the prosecution that the appellant had made a voluntary statement under Section 67 of the Narcotic Drugs & Psychotropic Substances Act (NDPS Act) and admitted recovery of heroin from him in the abovestated manner.

2. Vide impugned judgment dated 16.7.2012, the appellant was convicted under Section 21 of NDPS Act and vide the impugned order and sentence, he was sentenced to undergo rigorous imprisonment for ten years each under Section 21(c) and 29 of the Act. A fine of Rs.1 lac each on both the counts was also imposed on him. Being aggrieved from his conviction, the appellant is before this Court by way of this appeal. This application has been filed by the appellant seeking suspension of his sentence, inter alia, on the ground that he is in custody since 4.1.2009 and there are major discrepancies and material contradictions in the statements of prosecution witnesses. His counsel also submits that the appeal may not be heard in near future.

3. The application has been strongly opposed by the respondent DRI, inter alia, on the ground of embargo placed by Section 37 of NDPS Act. The reliance, inter alia, has been placed on Pawan Mehta Vs. State 2002 (1) JCC34 and Manoj Kumar @ Goldy Vs. S.K. Srivastava, Intelligence Officer, DRI20061) JCC (Narcotic) 53 (DHC).

4. In Daddu @ Tulsidas versus State of Maharashtra [(2000) 8 SCC437, the Apex Court while considering challenge to the constitutional validity of Section 32A of NDPS Act, which contains restriction on the suspension of sentence awarded under the NDPS Act, for the offences involving commercial quantity inter alia, held as under:

25. 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. xxx 27. 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. xxx 29. Under the circumstances the writ petitions are disposed of by holding that (1) xxx; (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.

Thus, the Apex Court very categorically held that if an application for suspension of sentenced awarded to a person who is convicted under Section 19, 24 or 27A of the Act, or is convicted for commission of an offence involving commercial quantity is filed, the Court is required to give an opportunity to the public prosecutor of opposing the said application and if the application is opposed, the sentence cannot be suspended unless the Court is satisfied that there are reasonable grounds for believing that the appellant is not guilty of the offence for which he has been convicted.

5. In *Union of India versus Rattan Mallik @Habul* [(2009) 2 SCC624]., the case as per the prosecution against the respondent before the Supreme Court was that he was involved in financing and trading in 14.900 kilograms of heroin, recovered from a specially made cavity above the cabin of a truck. Upon consideration of the evidence adduced, the Trial Court came to the conclusion that the prosecution had successfully proved the charges against the respondent and three others. On conviction, the Trial Court sentenced the respondent to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lac under Section 27A of the NDPS Act and undergo rigorous imprisonment for ten years and a fine of Rs.1 lac under Section 29 of the NDPS Act, with default stipulation. Being aggrieved, the respondent preferred an appeal to the High Court along with an application for suspension of sentence and grant of bail till his appeal was finally decided. The

High Court, by the impugned order, allowed the bail application on the ground that nothing had been found from the possession of the appellant, he was in jail for more than three years and there was no chance of the appeal being heard within a period of seven years. Setting aside the order passed by the High Court, the Honble Supreme Court, inter alia, held as under:

11. The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a 1 (2000) 8 SCC4374 special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application. As already noted, in the present case, the respondent has been convicted and sentenced for offences under the NDPS Act and therefore, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for offences under the Indian Penal Code, 1860 the relevant provision in the said special statute in this regard had to be kept in view. 13..the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression `reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and 6 circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. xxx 14. We

may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. Thus, the Apex Court clearly took a view that the period already spent by the appellant in custody and the chances of appeal being heard in near future, cannot be the ground for suspension of sentence in a case attracting the applicability of Section 37 of the Act.

6. In NCB versus Karma Phuntsok and others [2005(12) SCC480, the respondents before the Apex Court were convicted under Section 29 read with Section 20(b)(ii) (c) of the NDPS Act. On appeals being filed, the learned Judge suspended the sentence and enlarged them on bail. Allowing the appeals filed by NCB, the Apex Court noted that there was not even a whisper in the order of the High Court about the contentions raised in Section 37 of the Act with regard to enlarging all the accused on bail.

7. The learned counsel for the appellant relied upon the order passed by this Court on 12.01.2012 in CrI. M(B) No.1659/2011. In the aforesaid order, this Court relying upon the decision of a Division Bench of Punjab & Haryana High Court in Daler Singh versus State of Punjab [2007(11) KCR (CrI.) 316, suspending the sentence of the convict on the ground that he had spent five years and seven months in jail which included 18 months after conviction. In my view, the said order is per incuriam for the reasons that the attention of this Court was not drawn on the authoritative pronouncements of the Apex Court in Daddu @ Tulsidas (supra); Union of India versus Rattan Mallik @Habul (supra) and NCB versus Karma Phuntsok (supra).

8. The legal proposition which emerges from the above referred decision of the Apex Court is that mere period of incarceration in jail and inability of the court to hear the appeal soon after it is filed, cannot be a ground of suspension of

sentence during pendency of the appeal in any case attracting the applicability of Section 37(b) of the Act. To my mind, it would be incongruous to say that the restrictions imposed by Section 37 of the Act apply at the stage of investigation and trial, when the allegations against the accused are yet to be proved, but do not apply at the stage of appeal, against conviction, when there is a judicial finding against him. Therefore, the court will not be justified in taking a view, that the restrictions imposed by Section 37 of the Act do not apply during appeal against conviction or that incarceration for a particular period and/or inability of the court to hear the appeal expeditiously can supercede the statutory restriction. In any case, this appeal has been filed only on 10.5.2013 and considering the preference being given by this Court, to the cases of persons in custody, it is likely to come up for hearing quite soon.

9. Coming to the merit of the case, I find that the conviction of the appellant is based not only upon the witnesses of recovery of the narcotic drug from the special cavity of the vehicle but also upon the statement made by the appellant under Section 67 of the NDPS Act. The witnesses of recovery included the public witness PW9 Hari Om. The prosecution also examined the registered owner of the vehicle Harjinder Singh as well as the person to whom possession of the vehicle was given by him namely PW11 Praghat Singh. It was clearly stated by Praghat Singh that the vehicle in which the contraband was found was being driven by the appellant on the date the contraband was recovered.

10. In these circumstances, it cannot be said that there are reasonable grounds of believing that the appellant is not guilty of the offence for which he was convicted. The application is thereby dismissed. It is, however, made clear that the observations made in this order being tentative and prima facie, would not affect the decision of the appeal on merit. FEBRUARY10 2014/rd V.K. JAIN, J.

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