

Hori Lal Vs. State

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Court : Delhi

Decided On : Nov-08-1996

Reported in : 1996VAD(Delhi)774; 1997(2)ALT(Cri)5; 1997CriLJ821; 65(1997)DLT78; 1996(39)DRJ592

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Criminal Writ Appeal No. 412 of 1996

Appellant : Hori Lal

Respondent : State

Advocate for Pet/Ap. : Anil Soni and; S.K.Agarwal, Advs

Judgement :

Arun Kumar, J.

(1) In this petition under Article 226 of the [Constitution of India](#) the petitioner has prayed for grant of parole for a period of three months. The petitioner stands convicted vide judgment dated 12th April, 1994 passed by Addl. Sessions Judge, Delhi for offences under the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, Ndps Act) and has been sentenced to undergo R.I. for ten years and to pay fine of rupees one lakh. It is not clear from the petition whether the petitioner

filed any appeal against the said judgment and if so what has been the fate of the appeal - whether it is pending or stands disposed of. The petition only mentions that the petitioner has been languishing in jail since 14th May, 1991.

(2) Notice of the petition was issued to the State. Shri S.K. Aggarwal, the learned Standing Counsel for the State raised a preliminary objection regarding power of this Court to entertain the petition. This objection is based on Section 32-A of the Ndps Act. The section is reproduced here for ready reference :

'32-A. NO suspension, remission or commutation in any sentence awarded under this Act Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.'

(3) Relying on the last part of the section Mr. Aggarwal urged that the sentence awarded to the petitioner in the present case cannot be suspended or remitted or commuted by any authority or court including this Court. It is contended that the offences covered under the Ndps Act are of a very serious nature and they are heinous crimes against the society. therefore the legislature has taken away all powers with respect to the suspension, remission, commutation of sentences of persons convicted under the said Act.

(4) No doubt that the offences with which the Act deals are of a very serious nature and they affect the entire society and, therefore, ought to be dealt with with a heavy hand yet the question remains whether the court is powerless in granting small indulgence by way of interim bail or suspension of sentence for a brief period for reasons which the court may at a given time feel fit enough for grant of such indulgence to even a convict under the provisions of the Act? This question came up for consideration before a Division Bench of this court in Amarjit Singh and Another v. State 1993 Jcc 196. In this case this court was called upon to decide the issue about its power/jurisdiction to admit the appellants to bail after their conviction for offences under the Ndps Act. In this case the appeal against conviction was pending in this court and the appellants sought bail. The bar under section 32-A of the Act was pleaded to urge that this court had no power to grant

bail in such cases. After considering the relevant provisions of law it was held that section 32-A of the Act only has reference to Chapter XXXII-E of the Code of Criminal Procedure. Chapter XXXII-E relates to power of State/Central government to grant suspension, remission, commutation of sentences. On this basis it was held that section 32-A of the Act puts shackles on the power' of the State and/or the Central government to suspend, remit or commute the sentences. This section does not control the power of the High Court to suspend the order appealed against and to release the appellant on bail. Thus so far as this Court is concerned, it stands settled that in case an appeal against the order of conviction is pending in this court the bar created by section 32-A of the Act does 'not affect this court and the court has power to grant bail. We are in full agreement with the view expressed in the said judgment of this Court. A reference to section 32-A the Act shows that the section starts with the words 'Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force'. This part of the section read with last part of the section which refers to suspension, remission, commutation of sentence makes it clear that the section is intended to deal with the powers of the State/Central government as contained in Chapter XXXII-E of the Code. The words 'suspended or remitted or commuted' used in the section are used in Chapter XXXII-E of the Code. The section starts with by referring to the provisions of the Code. thereforee, it is clear that it is the said provisions of the Code which are intended to be dealt with by section 32-A. The section curtails the power of the State/Central government in this behalf. So far as the power of the High Court is concerned, section 36-B of the Act has to be referred to. This provision specifically provides that the High Court will exercise all powers conferred by Chapter Xxix and Xxx of the Code. Chapters Xxix and Xxx of the Code contain provisions regarding appeals, reference and revision including what orders can be passed by the High Court in such cases. Section 389 dealing with power to suspend sentences during pendency of an appeal and release of appellant on bill is contained in Chapter Xix of the Code. thereforee, these powers of the high court are clearly preserved by section 36-B of the Ndps Act.

(5) The learned counsel for the State relied on Anwar v. State 1994(2) Cri 687. In this case, a division bench of the Rajasthan High Court relying on section 32-A of

the Act dismissed a petition of a convict under the Ndps Act by which he had prayed for release on parole for attending a marriage in his family. In this judgment there is no discussion at all on the subject except that section 32-A of the Act has been pressed in service. Another judgment cited by the learned counsel for the State is reported as *Rajendra Singh v. State of M.P.* 1995 CrL.J. 3248. This is a Full Bench decision of the Madhya Pradesh High Court. This decision is rendered with particular reference to M.P. Prisoners Release on Probation Act, and to our mind is not of much assistance in the present context. We would rather prefer to follow the Division Bench judgment of our own Court.

(6) The next question which arises for consideration is that in the present case it appears that there is no appeal pending in this court against the order of conviction passed against the petitioner by the learned Addl. Sessions Judge. In such a situation, should this court in pursuance of its power under Article 226 of [Constitution of India](#) entertain a prayer of a convict for grant of parole To answer this question we may first note that this court has been entertaining such petitions. Particularly petitions have come from convicts whose appeals have been dismissed by this court and who are serving their sentence in jail. Petitions under Article 226 are filed by such convicts for grant of parole as and when occasion demands and in cases which are found fit for grant of such a prayer this court has been granting relief.

(7) The main question raised before us was the bar under section 32-A of the Act. We have found that the said bar is qua the State/Central government and does not affect the powers of this Court. On the analogy of power to grant interim bail or suspension of sentence in a case in which an appeal against conviction is pending in this, similar relief can be granted where no appeal is pending. The question is of principle and is not one of procedure. Article 226 of the [Constitution of India](#) fully empowers this Court to deal with such situations. We are of the considered view that section 32-A of the Act does not in any manner effect or curtail the power of this court to grant interim bail or suspend sentence of a convict. The preliminary objection is, therefore, overruled.

(8) Let the matter be posted for hearing of the petition on merits on 21st November, 1996.

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