
(2020) 10 MP CK 0186

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 693 Of 2019

Banwarilal Rajak And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389(1)

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 2(B), 8C, 20(II)

Citation : (2020) 10 MP CK 0186

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Kabeer Paul, Dinesh Prasad Patel

Judgement

Rajendra Kumar Srivastava, J

Heard on I.A.No.10669/2020, which is repeat (third) application filed by the accused/appellants, under section 389 (1) of Cr.P.C. for suspension of their jail sentence awarded by the Court of Special Judge (NDPS) Act, District Bhopal (MP), in Special Case No.9600028/2015 vide its judgment dated 31.12.2018 convicting the appellants/accused under Ssection 8-C and 20(II) 2(B) of the NDPS Act and sentenced them to undergo RI for 4 years with fine of Rs.10,000/-, with default stipulation, on each count, as mentioned in the impugned judgment.

As per prosecution case, on 3.11.2015, police of Police Station Chhola Mandir, District Bhopal (MP), received the information that accused/appellants are standing and kept contraband article (Ganja) in black coloured bag. They were waiting for some one and sitting on a Bajaj Discover motorcycle bearing registration No. RJ-17-SL/1339. During search, 3 kg 300 gm of Ganja has been seized from the possession of accused/appellant No.1 Banwarilal Rajak and 3 kg 400 gm of Ganja has been seized from the possession of accused/appellant No.2- Ashok. Thereafter, case has been registered against the accused/appellants for the aforesaid offence.

Learned counsel for the appellants/accused submits that accused/appellants have served almost two years of their jail sentence and during trial they remained in jail since 3.11.2015 to 5.3.2016 and they are in jail since 31.12.2018 to till date. No minimum sentence is prescribed in this case. Appellants have no previous criminal antecedents. Independent witness Dhanroop Sahu (PW/6) did not support the case of prosecution.

This appeal is of year 2019 and trial will take time to conclude the same.

There are material contradictions and omissions in the statement of the witnesses. There is fair chance to succeed in the appeal. There is no likelihood of their absconding and tampering with the evidence. Under the circumstances, if the execution of jail sentence of the appellants is not suspended, their right to file appeal will be futile. Hence, prayer is made for suspension of jail sentence and grant of bail of present accused/ appellants.

Learned Panel Lawyer has opposed the application and prayed for its rejection.

Having considered the arguments advanced by learned counsel for the parties, on perusal of the record, accused/appellant is in jail since 31.12.2018 and they remained in jail during trial since 3.11.2015 to 5.3.2016, the appellants have served almost half of their jail sentence, no minimum sentence is prescribed in the present case, seized contraband article (Ganja) comes under medium quantity, appellants are not previously convicted, there is no previous criminal antecedent against the appellants, this appeal is of year 2019, and final hearing of it will take long time, but without commenting anything on the merit of the case, the said I.A. is allowed. It is ordered that subject to payment of fine amount, if not already deposited, the execution of jail sentence of the appellants- Banwari Lal Rajak and Ashok shall remain suspended during the pendency of this appeal and they be released on bail on their furnishing a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) each with one solvent surety each in the same amount to the satisfaction of the trial Court for their appearance before the trial court on 14.12.2020 and thereafter on all other such subsequent dates, as may be fixed by the trial court in this regard.

In case, the appellant is found absent on any date fixed by the trial court then the said court shall be free to issue and execute warrant of arrest without referring the matter to this Court, provided the Registry of this Court is kept informed.

In view of the outbreak of 'Corona Virus disease (COVID-19)' the applicant shall also comply with the rules and norms of social distancing.

Further, in view of the order passed by the Hon'ble Supreme Court in suo moto W.P.No.1/2020, it would be appropriate to issue the following direction to the jail authority :-

1. The Jail Authority shall ensure the medical examination of the appellants by the jail doctor before their release.

2 . The appellants shall not be released if they are suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3. If it is found that the appellants are suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing them in appropriate quarantine facility.

List this matter for final hearing in due course, as per listing policy.

C.C. as per rules.