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**(2019) 05 MAN CK 0002**

**In the Manipur High Court**

**Case No : Criminal Appeal (Cril A) No. 11 Of 2018**

Mangte Indramani Alias Soso Koireng

APPELLANT

Vs

State Of Manipur

RESPONDENT

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**Date of Decision : 31-05-2019**

**Acts Referred:**

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 19, 21(c), 27, 27A, 32A, 33, 37, 50

Code Of Criminal Procedure, 1973 — Section 389

**Citation : (2019) 05 MAN CK 0002**

**Hon'ble Judges : M.V. Muralidaran, J**

**Bench : Single Bench**

**Advocate : Serto T. Kom, Sh. Yangya**

**Final Decision : Disposed Off**

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## **Judgement**

M.V Muralidaran, J

[1] Heard Mr. Serto T. Kom, learned counsel for the appellant and Mr. Sh. Yangya, learned Addl. P.P. for the State.

[2] The appellant, who has been arrayed as first accused in Special Trial No. 55 of 2018 on the file of the Special Judge (NDPS) (FTC), Manipur, was convicted under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo 10 years rigorous imprisonment with a fine of Rupees One Lakh to be paid within a period of 12 months from the date of judgment, failing which it was ordered that he shall serve imprisonment for further period of one year. Challenging the conviction and sentence imposed on him, the appellant/first accused has preferred present Criminal Appeal before this Court.

[3] According to the prosecution, on 26.02.1999 at about 3.00 P.M., the appellant was arrested at Wabagai Bazar Road Crossing along with another accused viz., Yumnam Sarat Singh Singh (second accused). The Arresting

Authority was said to have informed the appellant in writing of his rights under Section 50 of ND & PS Act to be searched in the presence of a Magistrate or a Gazetted Officer. As the appellant consented to have his body searched at the spot itself by any Police Officer and the body of the appellant was searched and a plastic packet of No.4 (Heroine powder) was found. The said packet was kept concealed inside one Nylon bag hanging from the left side shoulder of the appellant. The police registered a case and subjected the accused to trial before the Special Judge (NDPS) (FTC).

[4] After trial, the Special Judge (NDPS) (FTC) found the appellant guilty and convicted and sentenced him as stated supra. Assailing the said conviction and sentence, the appellant has preferred the present appeal. Pending appeal, the appellant has sought for suspension of the sentence and release on bail under Section 389 Cr.P.C.

[5] Resisting the prayer of the appellant, the State filed affidavit-in-objection stating that under the ND & PS Act, the convicted person is not entitled for suspension of sentence as Section 32-A of the said Act specifically states that notwithstanding anything contained in the Cr.P.C. 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. It is stated that, in the present case, the appellant was convicted under Section 21(c) of the Act and as such, sentenced to undergo 10 years imprisonment with fine of Rupees One Lakh and, therefore, he is not entitled to suspension of sentence under Section 389 of Cr.P.C.

[6] Heard the submissions of the learned counsel for the appellant and the learned Public Prosecutor for the State with regard to the interim prayer for suspension of sentence.

[7] The learned counsel for the appellant submitted that there are lot of infirmities in the impugned judgment and the appellant has got good case on merits in succeeding the appeal. He would submit that the appellant has got family and he has to look after the family. The learned counsel further submitted that the appellant was in custody during trial and in fact, while imposing sentence, he was brought from Manipur Central Jail, Sajiwa. The learned counsel for the appellant then submitted that the appeal would not be taken up for hearing in the near future and, therefore, the appellant is entitled to suspension of sentence pending appeal and the appellant undertakes to abide by the conditions imposed by this Court.

[8] The learned counsel next submitted that Section 32-A of ND & PS Act so far as it ousts the jurisdiction of the Court to suspend the sentence imposed on a convict under the Act is unconstitutional. The learned counsel then submitted that when a convicted person is sentenced to a fixed period of sentence and when the convict files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are

exceptional circumstances. To fortify his submissions, the learned counsel relied upon the following decisions:

(i) Bhagwan Rama Shinde Gosai and others v. State of Gujarat, reported in (1999) 4 SCC 421.

(ii) Dadu alias Tulsidas v. State of Maharashtra, reported in (2000) 8 SCC 437.

[9] Per contra, the learned Public Prosecutor submitted that the appellant is not entitled to suspension of sentence as it is barred by Section 32-A of the Act. He would submit that since the appellant was convicted under Section 21(c) of the ND & PS Act and sentenced to undergo 10 years rigorous imprisonment and also the appellant is over 46 years old, he is not entitled to suspension of sentence. According to the learned Public Prosecutor, the High Court cannot override the bar provided under Section 32-A of the Act and the appellant is not entitled to the benefit of Section 389 Cr.P.C. and therefore, the benefit cannot be extended to him.

[10] Under Section 32-A of ND & PS Act, no sentence awarded under the Act shall be suspended or remitted or commuted. However, the Hon'ble Supreme Court in Dadu alias Tulsidas, supra, held that Section 32-A is unconstitutional to the extent it takes away the right of the Court to suspend the sentence of a person convicted under the Act. In the said decision, the Hon'ble Supreme Court further held that taking away of the right of the Executive to suspend, remit and commute sentences under the Act is valid. The said decision further clarifies that the appellate Court can suspend sentence imposed under the Act, subject to the conditions set out in Section 37 of the Act.

[11] At this juncture, it would be appropriate to quote Section 37 of the Act, which reads thus:

"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 cognisable;

(b) no person accused of an offence punishable for offences under section 19 or section 27 A and also for offences involving commercial quantity shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application or 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."

[12] In *Dadu alias Tulsidas*, supra, the Hon'ble Supreme Court held as under:

"25. Judged from any angle, the section insofar 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 32-A insofar 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 the Allahabad High Court in *Ram Charan* case (1991) 9 LCD 160 (All) has correctly interpreted the law relating to the constitutional validity of the section and the judgment of the Gujarat High Court in *Ishwar Singh M. Rajput* case (1990) 2 Guj LR 1365 cannot be held to be good law."

[13] It is settled that when a convicted person is sentenced to a fixed period of sentence and the appellate Court finds that due to practical reasons the appeal cannot be disposed of expeditiously, it can pass appropriate orders for suspension of sentence.

[14] In *Bhagwan Rama Shinde Gosai*, supra, the Hon'ble Supreme Court held as under:

"When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted."

[15] In *Union of India v. Ram Samujh*, reported in (1999) 9 SCC 429, the Hon'ble Supreme Court 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 he is convicted and he is not likely to commit any offence while on bail and during the period of suspension of sentence.

[16] In the present case, the appellant challenged the judgment of the trial Court on various grounds as could be seen from the Memorandum of Appeal. The appellant has raised a particular ground viz., failure of the Arresting Officer in complying with the provisions of Section 50 of the Act.

[17] The provision of Section 50 of the Act is meant basically to protect an individual against the false implication by the Police. If this protection is sought to be denied by the Police, then this is one of the reasons which can lead, and is leading, the Court in the present case, to come to a prima facie, but reasonable satisfaction that the appellant might not have been involved in the crime alleged.

[18] It is to be noted that there are two accused in this case and the trial Court acquitted the second accused from the charges. Anyhow, this Court is not concerned with the merits of the appeal and the concern is only with regard to the point whether the appellant is entitled to suspension of sentence pending appeal.

[19] As stated supra, the Hon'ble Supreme Court in Bhagwan Rama Shinde Gosai, supra, held that the prayer for suspension of sentence pending appeal should be considered liberally unless there is any statutory restriction. As per the decision of the Hon'ble Supreme Court in Dadu alias Thulsidas, supra, Section 32-A of ND & PS Act does not in any way affect the powers of the authorities to grant parole and a sentence awarded under the Act can be suspended by the appellate Court.

[20] In the instant case, the appeal is of the year 2018 and due to practical reasons the appeal cannot be taken up in the near future and disposed of expeditiously. Therefore, this Court finds that this is a fit case to suspend the sentence imposed on the appellant pending appeal, however, subject to stringent conditions.

[21] In the light of the decision of the Hon'ble Supreme Court in Bhagwan Rama Shinde Gosai, supra, and the fact that the present appeal would take substantial time to come up for final hearing, without expressing any opinion on merits, this Court is inclined to suspend the sentence imposed on the appellant. Accordingly, the sentence imposed on the appellant in Special Trial Case No. 55 of 2018 dated 07.12.2018 on the file of the Special Judge (NDPS) (FTC), Manipur alone is suspended, subject to the compliance of the following conditions by the appellant:

(i) The appellant is directed to be released on bail on his furnishing a personal bond of Rupees One Lakh each, with two sureties for a like sum to the satisfaction of the Special Judge (NDPS) (FTC), Manipur.

(ii) The appellant, on his being enlarged on bail, is directed to report before the Special Judge (NDPS) (FTC), Manipur on all Tuesdays and Fridays at 10.00 A.M. until disposal of the appeal pending before this Court.

(iii) The appellant shall also report before the Border Affairs Police Station (BAPS) on the first Monday of every month at 10.00 A.M.

(iv) The appellant shall not indulge in any criminal activities during the period of suspension of sentence.

(v) The Border Affairs Police is directed to monitor the appellant and if they find

the appellant involved in any criminal activity, the Border Affairs Police is at liberty to bring it to the notice of this Court through the Public Prosecutor.

(vi) The appellant shall not leave the jurisdiction of the Court.

(vii) In case of violation of any condition, prosecution may ask for cancellation of bail.

(viii) It is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the appeal.