
(2020) 06 MP CK 0068

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 11226 Of 2019

Omprakash Urf Deolodhi And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 16-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 42, 37, 50

Citation : (2020) 06 MP CK 0068

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Yogesh Kumar Dhande, Pradeep Gupta

Judgement

Matter is heard through video conferencing.

Record of the Court below has been received.

Heard on the question of admission as well as on I.A.No.2142/2020, which is an application for suspension of sentence and grant of bail to the appellant.

The appeal is already admitted for final hearing on 27.01.2020.

The appeal has been preferred under Section 374(2) of the Cr.P.C., 1973 by the appellant against impugned judgment dated 15.11.2019 in S.T. No. 16/2017 passed by learned Special Judge (NDPS Act), Narsinghpur, M.P. whereby the appellant has been convicted for the offence punishable under Section 8/21 (kha) of NDPS Act and has been sentenced to undergo R.I. for 4 years with a fine of Rs. 10,000/- with default stipulation.

As per prosecution case, there is allegation against the appellant that on 27.11.2017 at in between 10.30 to 12.35 near Tindni road, Nayagaon, Narsinghpur, appellant alongwith other co-accused have been found with the possession of 9 gram of smack (heroin). Thereafter, the aforesaid offence has been registered against the present appellant and other co-accused person.

Learned counsel for the appellant submits that the appellant-accused is in jail since 15.11.2019. He remained in jail during trial from 27.11.2017 to 26.07.2018. He has been falsely implicated in this case. Apart from this, it is evident from the record that the independent witness has turned hostile by the prosecution. It is alleged by the prosecution that 9 gram of smack (heroin) was seized from the possession of accused/appellant, which comes under the medium quantity. It is a case of personal search, but Investigating Officer did not comply the mandatory provisions of Section 50 of NDPS Act. Provision of Section 42 of NDPS Act was not complied with in this case. The other co-accused has already been granted bail by this court in Cr.A. No. 11226/2019 vide order dated-27.01.2020. The whole case of prosecution is doubtful. There are many contradictions and omissions in the evidence Date: 17/06/2020 of 15:03:24 prosecution witnesses. There are fair chances to succeed in the case. Final hearing Digitally signed by PALLAVI SINHA of this appeal will take time. Therefore, the application filed on behalf of the appellant may be allowed and the period of his remaining jail sentence may be suspended further and he may be released on bail. In support of his contention, learned counsel for the appellant has produced the judgment cited in the case of State of Rajasthan v. Parmanand & Anr., 2014 Cri. L.J. 1756, State of Punjab v. Labh Singh, 1996 Cri. L.J. 3996, Arif Khan @ Agha Khan v. State of Uttarakhand, (2018) 104 ACrC 610 & State of Himachal Pradesh v. Kamal Kishore, 2016 Cri.L.J. 1021, Anil Kumar and another Vs. State of M.P. [2006(4) MPHT 128] and Ratto Vs. State of H.P. [2003(3) Crimes 323] (DB).

Learned P.L. for the respondent/State has opposed the application.

Considering the contentions of both the parties and the fact that the quantity of seized smack did not under the purview of commercial quantity, the restriction under Section 37 of NDPS Act is not applied in this case and compliance of Section 50 of NDPS Act was not done in appropriate manner, contraband smack (heroin) was seized from the pocket of the accused/appellant instead of taking accused/appellant to Gazetted Officer or Magistrate, Investigating Officer himself searched the pocket of appellant-accused, the appellant is in jail since 15.11.2019 and he remained in jail during trial from 27.11.2017 to 26.07.2018, this appeal will take time for final disposal but without expressing any opinion on the merits of the case, I am of the considered opinion that it would be appropriate to suspend the custodial sentence awarded to the appellant and grant bail to him.

Consequently, I.A.No.2142/2020 is allowed subject to deposit of fine amount, if not already deposited. The custodial sentence awarded to the appellant shall remain suspended during the pendency of this appeal.

Appellant-Omprakash @ Deo Lodhi be released from custody subject to his furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one surety in the like amount to the satisfaction of the Trial Court. The appellant shall appear and mark his presence before Trial Court on 04.08.2020

and shall continue to do so on all such future dates, as may be given in this behalf, during the pendency of the matter.

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 appellant 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 appellant by the jail doctor before his release.
2. The appellant shall not be released if he is suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.
3. If it is found that the appellant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

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