
(2000) 01 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Appeal No. 104 of 2000

Prem Narain Sharma and Another	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 32A, 37

Citation : (2001) 2 ACR 1888

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Judgement

J.C. Gupta, J.—Heard Shri Prashant Kumar Singh, learned Counsel for the Appellant and Shri Sanjay Kumar Singh, learned standing counsel for Union of India.

2. This is second application for bail moved on behalf of Appellants Prem Narain Sharma and Atul Kumar Sharma who had been convicted and sentenced to rigorous imprisonment for 10 years and imposed fine of rupees one lac each of the Appellants by the trial court.

3. The prayer for bail of Appellants was refused in view of decision of Apex Court in Makbool Singh v. State of Punjab (XXXVIII) 1999 ACC 583 (SC). While refusing prayer of bail, this Court further observed that the matter be put before the Hon'ble Chief Justice for expediting the hearing of the appeal. The Hon'ble Acting Chief Justice by order dated 4.5.2000 expedited the hearing of appeal. It is submitted by the Appellants' counsel that despite this order of the Hon'ble Chief Justice, the Appellants' counsel has neither furnished any paper book nor the appeal has been listed for hearing.

4. It is further submitted by Appellants' counsel that a Constitutional Bench of the Supreme Court in the case of Dadu alias Tulsi etc. v. State of Maharashtra and Ors. (XLI) 2000 ACC 911 (SC), has held that Section 32A of N.D.P.S. Act is unconstitutional to the extent that it takes away the right of the Court to suspend

the sentence of a conviction.

5. Learned Counsel for the Appellants, therefore, argued that a sentence awarded under the Act can be suspended by the appellate court and since the Appellants were on bail during trial, they be allowed bail pending their appeal.

6. In the aforesaid decision, the Apex Court further observed that a sentence awarded under the Act can be suspended by the appellate court only but strictly subject to the conditions spelt out u/s 37 of the Act. Therefore, though the appellate court has power to suspend sentence in relation to convicts of the offences punishable under N.D.P.S. Act, yet that power is to be exercised subject to conditions spelt out u/s 37 of the Act.

7. After going through the record of the court below and having regard to the fact that the hearing of appeal has already been expedited, this Court is not inclined to enlarge the Appellants on bail pending their appeal.

8. However, the office is directed to get paper book prepared within the weeks and list the appeal for hearing before appropriate Bench, as hearing of the same has already been expedited by the Hon"ble Chief Justice by order dated 4.5.2000. The application is accordingly, disposed of.