
(2012) 08 RAJ CK 0016
In the Rajasthan High Court
Case No : Criminal Appeal No. 1883 of 2007

Ranjit Kumar Yadav

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 389

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 8

Citation : (2013) 3 RLW 2203

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Anil Umpan, for the Appellant; Pradeep Shrimal, Public Prosecutor, for the Respondent

Judgement

Mahesh Chandra Sharma, J.—This second suspension of sentence application has been filed u/s 389 Cr.P.C. by the petitioner for suspension of execution of sentence imposed by the Special Judge, NDPS Cases Jaipur City Jaipur in Sessions Case No. 21 of 2002. The accused appellant was convicted under Sec. 8 /20 of the NDPS Act and sentenced to undergo R1 of 10 years with fine of Rs. 1.00 lac and in case of default to further undergo SI of one year. Brief facts of the case are that on 21.4.2005 SHO Police Station GRP Jaipur during the patrolling at Railway Station Jaipur recovered two bags of Cannabis (Ganja) (Poppy husk) weighing 10 kilogram from the accused appellant on the basis of which he lodged FIR No. 53 of 2005 on the same day, and arrested the accused appellant and after conclusion of investigation filed charge sheet on 12.5.2005 before the trial court i.e. court of Special Judge NDPS Cases Jaipur where a criminal case No. 21/2005 was registered. The trial court framed charge u/s 8 /20 of the NDPS Act against the accused and after recording the statements of the prosecution witnesses and exhibiting documents P1 to P 21, and statement of the accused petitioner u/s 313 Cr.P.C. and after hearing the arguments found the accused petitioner guilty of Section 8 /20 NDPS Act and sentenced him as mentioned above.

2. The appellant filed first suspension application along with the appeal and the said application was rejected by this court after hearing both the counsel i.e. the learned counsel for the petitioner and the Public Prosecutor. This court while rejecting the bail application observed as under:

Learned Public Prosecutor who is appeared on behalf of the State has contended that such type of person, whose offence has been proved and sentenced has been awarded by the trial court, should not be released on bail. He has further argued that such type of anti-social person who do their acts against the society should not be released on bail.

In view of the above, and after perusing the complete record of the case, I am not inclined to suspend the sentence and released the accused applicant on bail.

3. Mr. Anil Upman, learned counsel appearing for the accused appellant has contended that the accused petitioner is in judicial custody since 21.4.2005. He has further contended that approximately he is in jail for the last 7 years and his sentence should be suspended. He has placed reliance on Man Singh Vs. Union of India (UOI) .

4. On the other hand, Mr. Pradeep Shrimal, Public Prosecutor appearing for the State has contended that this is a case in which the appellant has committed an offence under the NDPS Act and the offence has been proved and sentence has been awarded and the accused appellant is involved in antisocial activities and no new circumstance has been pointed out to suspend his sentence. I have heard the learned counsel for the parties. The appeal filed by the appellant against the judgment of conviction and sentence was listed before this court on 20.1.2009 on the application for early hearing. On 20.1.2009 this court observed that "nobody turns up even in second round to argue the application for early hearing of the matter. The application stands dismissed." Thereafter the matter was listed before the court on 2.7.2009 and no one represented the accused appellant and the matter was directed to be posted after four weeks. Thereafter on 13.8.2009 as no one represented the accused the matter could not be taken up and posted the matter after four weeks. Thereafter the matter was notified to be listed after Diwali vacation on 1.10.2009. The case could not be reached for hearing on 8.10.2009, 9.2.2010, 11.2.2010, 16.2.2010, 18.2.2010, 25.2.2010, 4.3.2010, 9.3.2010, 11.3.2010. On May 4, 2010 no body represented the accused appellant and the matter was directed to be listed after two weeks. Again on 21.10.2010 no body represented the accused appellant and the matter was directed to be posted after four weeks. Again on 23.10.2010 this Court while observing that "no one is present on behalf of the appellant even in the second round and posted the matter on 7.12.2010 as a second case. Again on 21.7.2011 the appeal was called for hearing, but non represented the appellant to argue the same and in these circumstances the matter was again listed for hearing on August 11, 2011. The case could not be reached on 17.8.2011, and 13.9.2011. On 11.11.2011 nobody represented the accused and the matter was directed to be listed on 15.11.2011. Again the matter was adjourned for a week on

17.11.2011. On December 5, 2011 the case was directed to be taken up on 8.12.2011 as the counsel for the appellant has sought time to prepare the case. Again the case was listed on 12.12.2011, 31.1.2012, 10.4.2012 but the same was directed to be adjourned one way or the other. Thus it apparent that the lawyer who is representing the accused appellant in the appeal is not appearing before the court for addressing the arguments in the appeal on behalf of the appellant. There is no new circumstance to be considered for suspension of sentence of the accused appellant on his second application for suspension of sentence and the same is hereby rejected. However, the accused appellant or his counsel is free to move an application before the appropriate Bench for early listing and early hearing of the appeal. The second application for suspension of sentence stands rejected.