

A THE STATE (GNCT OF DELHI) NARCOTICS CONTROL
BUREAU

v.

LOKESH CHADHA

B (Criminal Appeal No. 257 of 2021)

MARCH 02, 2021

**[DR DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

C *Code of Criminal Procedure, 1973:*

s. 389(1) r/w. s. 37 of *Narcotic Drugs and Psychotropic Substances Act, 1985 – Suspension of sentence – Of the person convicted u/ss. 23(c) and 25A of NDPS Act – Granted by High Court during pendency of the appeal – Appeal to Supreme Court – Held: Where trial has ended in conviction, High court should exercise its power to suspend the sentence for sufficient reasons, which must have bearing on the public policy underlying s. 37 NDPS Act – No case of suspension of sentence u/s. 389(1) is made out in the present case and hence not sustainable.*

D *Allowing the appeal, the Court HELD: 1. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless 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”. Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is*

E **Allowing the appeal, the Court**

F **HELD: 1. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless 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”. Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is**

not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. [Para 9][542-D-H]

Preet Pal Singh vs. State of Uttar Pradesh (2020) 8 SCC 645; State of Kerala vs. Rajesh (2020) 12 SCC 122 – relied on.

2. The High Court in the present case, has not applied its mind to the governing provisions of the NDPS Act. On the basis of the material which emerged before the Special Judge and which forms the basis of the order of conviction, no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside. [Para 10][543-F-G]

Case Law Reference

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| (2020) 8 SCC 645 | relied on | Para 9 |
| (2020) 12 SCC 122 | relied on | Para 10 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 257 of 2021

From the Judgment and Order dated 28.07.2020 of the High Court of Delhi at New Delhi in Crl.M(Bail) No. 7540 of 2020 in Crl. A. No. 342 of 2020.

Aman Lekhi, ASG, Bharat Singh, B V Balaram Das, Divyansh H F Rathi, Anirudh Bakhru, Advs. for the Appellant

Ms. Nidhi, Jaydip Pati, Advs. for the respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment of a learned Single Judge of the High Court of Delhi dated 28 July 2020, by which the application

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- A filed by the respondent seeking suspension of sentence under Section 389(1) of the Code of Criminal Procedure 1973¹ has been allowed.
3. The respondent has been convicted of offences punishable under Sections 23(c) and 25A of the Narcotic Drugs and Psychotropic Substances Act 1985². He has been sentenced to suffer rigorous imprisonment for ten years in respect of the offence under Section 23(c) and for three years under the provisions of Section 25A, apart from fine.
4. Briefly stated, on 2 December 2015, the IO of the Narcotics Control Bureau, Delhi Zonal Unit received a phone call from DHL Courier that two parcels were lying in the office and were suspected to contain narcotic drugs. Accordingly, a team of the Narcotics Control Bureau, Delhi Zonal Unit, reached the office of DHL. Two parcels were seized. The parcels were found to contain 325 grams of heroin and 390 grams of pseudoephedrine. The parcels were booked to a foreign destination, at the behest of a foreign national, by the co-accused who was an employee of the respondent. The respondent himself is a proprietor of the courier agency which had accepted the parcels initially for booking from the foreign national.
5. The Special Judge, after considering the entirety of the evidence on the record, came to the conclusion that the offence stood established as against the respondent, but the benefit of doubt was granted to the co-accused on the ground that he was only an employee who was acting at the behest of the respondent. An appeal has been filed before the High Court of Delhi by the respondent. While considering the application for suspending the sentence, the learned Single Judge recorded the following submissions of the respondent in paragraph 2 of the impugned order:
- “2. Learned counsel for the appellant submits that out of the total sentence of 10 years awarded to the appellant by the Trial Court, the appellant has already undergone a period of about 4 years and 4 months. He has taken the Court through the records to show that though the appellant who was owner of the courier company has been convicted and the employee of the company who had received the parcels, has been acquitted on the same set of evidence. It is further submitted that no investigation was made to arrest the consignor. He also submits that since the appeal is

H ¹ “CrPC”
² “NDPS Act”

likely to take some time to come up for final hearing, no useful purpose would be served in keeping the appellant in jail till such time and prays that the appellant's sentence may be suspended during the pendency of the appeal."

6. The application was opposed on behalf of the Narcotics Control Bureau by the Senior Standing Counsel, who appeared to oppose the suspension of sentence. The High Court, while passing an order of suspension of sentence, indicated its reasons in paragraph 4 of the order, which reads as follows:

"4. Looking into the facts and circumstances of the case and the period undergone by the appellant and the fact that the appeal is not likely to be taken for hearing in near future on account of disruption caused by COVID-19 pandemic, the application is allowed and the sentence of the appellant is suspended during the pendency of the appeal on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty Magistrate, subject to the following further conditions:

- (i) The appellant will not leave NCT of Delhi without prior permission of the Court.
- (ii) The appellant shall appear before the Court as and when the appeal is taken up for final hearing.
- (iii) In case of change of address, the appellant shall promptly inform the same to the concerned IO as well as to the Court."

7. Mr Aman Lekhi, learned Additional Solicitor General appearing on behalf of the appellant, submits that the provisions of Section 37 of the NDPS Act contain stringent requirements before an application for bail can be allowed. Learned Additional Solicitor General submits that one of the requirements is that "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". It was urged that in a case such as a present where the conviction is under the provisions of Sections 23(c) and 25A of the NDPS Act, the requirement of Section 37 that "there are reasonable grounds for believing that he is not guilty of such offence" must apply *a fortiori* because the trial Court after conducting a trial has, on the basis of the evidence which is adduced, come to the conclusion that the offence has been established. In the

- A present case, it was urged that absolutely no reasons have been indicated by the learned Single Judge of the High Court for granting bail, save and except for a vague reference to the “facts and circumstances” of the case, the period undergone by the respondent and the fact that the appeal was not likely to be taken for hearing in the near future due to the disruption caused by the Covid-19 pandemic.
- B 8. On the other hand, Ms Nidhi, learned counsel appearing through the Supreme Court Legal Services Committee to represent the respondent, has adverted to the judgment of the Trial Judge and submitted that *prima facie* the involvement of the respondent would not stand established. That apart, it has been submitted that the respondent has undergone about four years and four months of imprisonment and the High Court having exercised its discretion to grant bail, a case for interference has not been made out.
9. While considering the rival submissions, we must at the outset advert to the manner in which the learned Single Judge of the High
- Court has dealt with the application for suspension of sentence under Section 389(1) of CrPC. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the NDPS Act. The findings of the learned Special Judge which have been arrived at after a trial on the basis of evidence adduced indicate that the respondent who was a proprietor of a courier agency was complicit with a foreign national in the booking of two parcels which were found to contain 325 grams of heroin and 390 grams of pseudoephedrine. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless 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”. Where the trial has ended in an order of conviction, the High
- Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act. At this stage, we will

refer to the decision of a two-Judge Bench of this Court in **Preet Pal Singh v State of Uttar Pradesh**³ where Justice Indira Banerjee, speaking for the Court, observed as follows:

“35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P. and Anr.* (*supra*). However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”

10. The principles which must guide the grant of bail in a case under the NDPS Act have been reiterated in several decisions of this Court and we may refer to the decision in **State of Kerala v Rajesh**⁴. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS Act. On the basis of the material which emerged before the learned Special Judge and which forms the basis of the order of conviction, we are of the view that no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside.

11. While concluding, however, we hasten to add that our observations are confined to the question as to whether a case for

³ (2020) 8 SCC 645

⁴ (2020) 12 SCC 122

- A suspension of sentence was made out and shall not affect the merits of the case when the appeal comes up for hearing before the High Court.
 - 12. For the above reasons, we allow the appeal. The judgment and order of the High Court dated 28 July 2020 suspending the sentence of the respondent shall stand set aside and the respondent shall surrender forthwith to the sentence. However, having regard to the fact that the respondent has undergone four years and four months of imprisonment, we would request the High Court to take up the appeal for hearing and final disposal upon the respondent's surrendering to the sentence and dispose it of by the end of 2021.
- C 13. Pending application, if any, stands disposed of.

Kalpana K. Tripathy

Appeal allowed.