

Tassaduq Hussain Joo & Anr vs Wild Life Crime Control Bureau (Nr) on 20 December, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL. REV. P. 368/2021

TASSADUQ HUSSAIN JOO & ANR

Through: Mr. Satya Bhushan, Adv

versus

WILD LIFE CRIME CONTROL BUREAU (NR) Respondent

Through: Mr. Farman Ali Magray Sr. Pan
Counsel with Mr. Athar Raza
Farooquei and Mr. Krishan Kum
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 20.12.2021 Exemption allowed subject to just exceptions.

The application stands disposed of.

1. The instant revision petition under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed on behalf of the petitioners seeking the following reliefs: -

"a) call for record of case being CC No.513926/2016 U/s 39/40(2)/44/49/49B(1) R/w Sec. 51 of Wild Life Protection Act, from the court of Sh. Pawan Singh Rajawat, Ld. ACMM (Special Acts), Central Tis Hazari District Courts, Delhi for the purpose of hearing and adjudication of the present revision petition;

b) set aside the impugned judgment dated 25.09.2011 passed by the Ld. Appellate Court and the judgment dated 30.07.2019 and order sentence dated 06.08.2010 passed by the Ld. Trial Court in CC No.513926/2016 U/s 39/40(2)/44/49/49B(1) R/w Sec. 51 of Wild Life Protection Act and acquit the petitioners;

c) stay the operation of the impugned judgments and suspend order on sentence mentioned hereinabove during till the final disposal of the present revision petition."

2. As per the prosecution, the brief facts are that on 28th September 2011, petitioner no.1 arrived at Indira Gandhi International Airport from Almati by Flight No. KC- 907 and exercised the option to walk through Green Channel along with his baggage. Petitioner no.1 was stopped and on scanning, the images reflected cloth items besides some woollen shawls. On examination of the baggage, the shawls appeared to be of superfine quality. Thereafter, petitioner no.1 was diverted to the nearby Customs Counter at Red Channel for detailed inspection/examination of his baggage because of Green Channel violation. On examination, thirteen shawls and used personal effects were recovered from the said baggage. On demand, petitioner no.1 failed to produce any documentary evidence for legal import of the said recovered goods.

3. Smt. Aarti Singh, Wildlife Inspector was called who suspected 04 shawls to be made of shahtoosh wool and advised Customs to send the samples to Wildlife Institute of India, Dehradun for confirmation of the same. An inspection report of Wildlife Inspector was given on the spot.

Shawls were accordingly confiscated by the Customs under the Panchnama (Seizure memo) dated 29th September 2011.

4. Petitioner no.1 in the statement has disclosed the name of petitioner no.2, which was recorded under Section 108 of the Customs Act, 1962. On the basis of the statement of petitioner no.1, search was conducted at the residence of petitioner no.2 at H-70, 3rd Floor, Lajpat Nagar-I, New Delhi on 29th September 2011. During search, one shawl was found, examined and opined to have contained the guard hair of Tibetan Antelope. The said shawl was also seized by the Customs Officers for further investigation and Panchnama dated 29th September 2011 was drawn by the Customs Officer on the spot.

5. On 29th September 2011 and 30th September 2011, both the petitioners were arrested, produced before the learned Metropolitan Magistrate and sent to judicial custody and later on, they were released on bail vide the order of the Court below dated 3rd October 2011 and 5th October 2011, respectively.

6. Vide its order dated 30th July 2019, the petitioners were found guilty and convicted under Sections 39/40(2)/44/49/49B(1) read with Section 51 of Wildlife Protection Act, 1972 and vide its order dated 6th August 2019 sentenced to punishment of 3 years with fine of Rs.10,000. Aggrieved by the aforesaid orders, one of the petitioners filed an appeal before the Appellate Court. The said appeal was dismissed vide order dated 25th September 2021 upholding the conviction and sentence but with a modification in the sentence, converting rigorous imprisonment into simple imprisonment.

7. The petitioners were sent to jail on 25th September 2021 and since then they have been in judicial custody.

8. It is submitted on behalf of the petitioners that the learned Appellate Court and learned Trial Court ought to have observed the law laid down by the Hon'ble Supreme Court in Sahadeven v. State of Tamil Nadu, AIR 2012 SC 2435 thereby holding that in case of circumstantial evidence, the onus

lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. It is also submitted that the respondent had neither examined any of the panch witnesses nor placed on record any documentary proof thereof. Even the respondent has failed to offer any explanation for not examining the panch witnesses. It is also submitted that the the learned Appellate Court and the learned Trial Court have ignored the fact that the alleged trolley bag along with 9 pashmina shawls were not produced before the Court.

9. Learned counsel for the petitioners submitted that the impugned orders passed by the both the Courts below are without taking into consideration all the facts of the case and law settled by the Hon'ble Supreme Court and this Court. The same is liable to be reviewed in the instant petition.

10. Heard learned counsel for the petitioners/revisionist and perused the record.

11. Issue notice to the respondent. Mr. Farman Ali Magray learned senior panel counsel for the respondent accepts notice and vehemently submitted that there is no illegality in the order passed by the Courts below and prays for some time to file objections/status report. Let the same be filed within six weeks.

12. List in due course.

13. Trial Court record be requisitioned.

CRL.M.(BAIL) 1371/2021 (Suspension of Sentence)

1. The instant application under Section 397(1) read with Section 482 Cr.P.C. has been filed on behalf of the petitioners seeking the following relief: -

"a) suspend the execution of the impugned order on sentence dated 06.08.2010 passed by the Ld. Trial Court in CC No.513926/2016 U/s 9/40(2)/44/49/49B(1) R/w Sec. 51 of Wild Life Protection Act and grant bail to the petitioners, till the final disposal of the present revision petition."

2. It is submitted on behalf of the petitioners that during the pendency of the appeal while the petitioners were on bail, they never misused the bail. They have been languishing in jail for almost three months.

3. Heard learned counsel for the petitioners and learned Senior Panel Counsel appearing on behalf of the respondents.

4. For the reasons stated in the application and in such circumstances referred above, this Court is inclined to accept the plea of the applicants/petitioners for suspension of the substantive order and sentence dated 6th August 2019.

5. It is made clear that any observations qua the merits of the case, are purely for the purpose of deciding the question of grant of bail pending for the final disposal of the instant Revision Petition and shall not be construed as an expression of final observation in the main matter.

6. In light of the aforesaid arguments, documents on record and upon a perusal of the entire record, the application is hereby allowed.

7. Accordingly, the sentence of the petitioners is suspended during pendency of the revision petition and they are ordered to be released on bail on their furnishing of personal bonds in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with solvent surety each of like amount to the satisfaction of the Jail Superintendent/Trial Court concerned subject to the conditions as follows:

(a) they shall under no circumstances leave India without prior permission of the Court;

(b) they shall appear before the Court as and when required;

(c) they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

(d) they shall provide their mobile number and keep it operational at all times; and

(e) they shall commit no offence whatsoever during the period they are on bail.

8. In the meantime, the substantive order and sentence dated 6th August 2019 passed by the learned Trial Court shall remain suspended till the final disposal of instant Criminal Revision.

9. The application stands disposed of.

CRL.M.A. 18319/2021 (Interim bail)

1. The instant application under Section 397(1)/401 read with Section 482 Cr.P.C. has been filed on behalf of the petitioners seeking interim bail for a period of two months.

2. Since the sentence of the petitioners has been already been suspended during the pendency of the revision petition and they have been directed to be released on bail, the instant application seeking interim bail has been rendered infructuous.

3. The same is accordingly dismissed as infructuous.

Copy of this order be sent to Superintendent Jail for compliance forthwith.

CHANDRA DHARI SINGH, J DECEMBER 20, 2021 Aj