

GAHC010031682024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : I.A.(Crl.)/179/2024

PAPPU SINGH,
S/O NAGEN SINGH,
R/O CHAKILGAON,
P.S.- DEVRAPARA,
DIST.- JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 22.03.2024

- 1.** Heard Ms. S. K. Nargis, learned counsel for the applicant. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.

- 2.** This application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, *Sri Pappu Singh* praying for suspension of sentence imposed on him by the judgment and order dated 06.08.2022

passed by the learned Sessions Judge (NDPS), Kamrup(M) in NDPS Case No. 26/2019. By the said judgment, the applicant was convicted under Section 20(b) (ii)(C) of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.1,00,000/- (Rupees One Lakh) and in default of payment of fine to undergo further simple imprisonment for six months. The applicant has impugned the aforesaid judgment by preferring the connected appeal which has been registered as Criminal Appeal No. 277/2022.

3. The relevant facts in this case are that on 27.11.2018 one Binu Hazarika, SI of Police of GRPS lodged an FIR before the Officer-in-charge of GRPS Police Station, Guwahati, *inter alia*, stating that on that day at about 5.45 PM, Bipul Borgohain (UB) along with other police personnel was conducting checking of Coach No. A-3 of Train No. 20505 DN Dibrugarh NDLS Rajdhani Express which was standing at platform No. 1 of the Guwahati Railway Station and during checking the said team recovered five packets of suspected *Ganja* wrapped in black colour ploythene paper from two accused persons including the present applicant. Thereafter, the said bag containing the packets of suspect *ganja* were seized and on weighing 22 kgs. of *Ganja* was found. After receipt of the aforesaid FIR, Guwahati GRPS Case No. 333/2018 under Section 22(c) of the NDPS Act, 1985 was registered and investigation was initiated.

4. Ultimately, after completion of the investigation, the charge-sheet was laid against the present applicant under Section 20(c) of the NDPS Act, 1985 and the applicant face the trial remaining in custody. The charge under Section 20(b)(ii)(C) of the NDPS Act, 1985 was framed against the present applicant and when the said charge was read over and explained to him he pleaded not guilty and claimed to be tried.

5. The prosecution side examined as many as six witnesses during trial. The applicant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which he pleaded his innocence and denied the truthfulness of the prosecution witnesses. Though, when a question was posed to him during his examination under Section 313 of the Code of Criminal Procedure, 1973, he answered that he would be adducing defence evidence, however, he failed to adduce any defence evidence in this case. Ultimately, by the judgment and order which has been impugned in the connected appeal, the applicant was convicted and sentenced in the manner already described in the paragraph No. 2 herein above.

6. The learned counsel for the applicant has submitted that the applicant has already completed more than half of the term of the sentence imposed on him. He has completed five years three months seven days as on date. It is also submitted by the learned counsel for the applicant that the health condition of the present applicant is not good and as per the health status report submitted by the Superintendent of the Central Jail, Guwahati, the applicant is suffering from colour blindness and ophthalmological ailments as well as he is suffering high diabetes and blood pressure.

7. The learned counsel for the applicant has also submitted that in this case, the trial court has ignored the fact that the mandatory provision of Section 52A of the NDPS Act, 1985 was not followed by the prosecution side as the seized contraband was not produced before the Officer-in-Charge of the GRPS Police Station after seizure and taken to the jurisdictional Magistrate for certifying the inventory. It is also submitted by the learned counsel for the applicant that no certification of the inventory of the seized contraband had been made by the Magistrate as per Section 52A of the NDPS Act, 1985. It is

also submitted that there is also a violation of the requirement of provisions of Section 57 of the NDPS Act, 1985 though the learned counsel for the applicant also fairly submitted that the requirement under Section 57 is not mandatory but directory.

8. The learned counsel for the applicant has also cited the following rulings of the Apex Court of India to impress upon this Court that the mandate of Section 52A of the NDPS Act has to be followed by the prosecution side which was totally ignored in this case:-

“i. Bothilal –Vs- Intelligence Officer Narcotics Control Bureau reported in 2023 SCC OnLine SC 498

ii. Union of India –Vs- Mohanlal and Anr. reported in (2016) 3 SCC 379.”

9. The learned counsel for the applicant has also cited a ruling of Apex Court of India in the case of “**Mossa Koya KP –Vs- State (NCT of Delhi)**” reported in “**2021 SCC OnLine SC 3110**” wherein citing the judgment of the Punjab and Haryana High Court in “**Daler Singh –Vs- State of Punjab**” reported in “**2006 SCC OnLine P&H 1591**”, it was observed that where the convict is sentenced for ten years for having conscious possession of commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include at least fifteen months after conviction.

10. The learned counsel for the applicant has submitted that the present applicant has already been detained behind the bars for more than five years and he has been detained since 15.12.2018 i.e., the date of his initial arrest. The learned counsel for the applicant has, therefore, submitted that considering the rulings of the Apex Court of India cited by her as well as considering the fact that the mandatory provisions were not followed by the prosecution side as

well as considering the health condition of the applicant, the applicant may be allowed to go on bail during the pendency of the Criminal Appeal No. 277/2022 and the execution of sentence imposed on the present applicant may be kept under suspension during pendency of the connected appeal.

11. On the other hand, Mr. K. Baishya, learned Additional Public Prosecutor has submitted that the contraband of seized in this case involves commercial quantity of *Ganja* and, therefore, embargo of Section 37 of the NDPS Act, 1985 would be applicable even at the appellate stage while considering an application under Section 389 of the Code of Criminal Procedure, 1973. He has also submitted that the applicant was found in conscious possession of the seized contraband and all the mandatory provisions of the NDPS Act, 1985 were followed in this case.

12. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record.

13. Since, the impugned judgment and order by which the present applicant was convicted and sentenced has already been put to challenge in the connected criminal appeal, this court does not intend to delve deep into the evidence and scrutinize the evidence of the prosecution witnesses in depth at the stage of considering of an application under Section 389 of the Code of Criminal Procedure, 1973. However, this Court is of considered opinion that the appeal of the appellant could not be finally heard till now and during this period the applicant has been detained behind the bars. It also, *prima facie*, appears that there is nothing on record to show that the seized contraband was produced before the Magistrate and inventory was prepared and it was certified in the manner as prescribed under Section 52A of the NDPS Act and, therefore, it *prima facie*, appear that at least there has taken non-compliance of the

mandatory requirement of Section 52A of the Act.

14. Further taking into consideration, the observation made by the Apex Court in the Case of "**Mossa Koya KP –Vs- State (NCT of Delhi)**", this Court is of considered opinion that since the applicant has been languishing behind the bars since five years and his appeal is yet to be heard and also taking into consideration of the health condition of the present applicant, this Court is inclined to suspend the execution of remaining part of the sentence during the pendency of the Criminal Appeal No. 277/2022 and also allowed the applicant to go on bail of Rs.50,000/- (Rupees Fifty Thousand) with one surety of like amount to the satisfaction of learned Special Judge, Kamrup(M) with following conditions that:-

- i. He shall surrender before the learned Special Judge, Kamrup(M) or wherever he directed to surrender if ultimately his appeal fails in this case.
- ii. He shall not indulge in the similar offence with which he has been convicted in this case.

15. With the above observation, this interlocutory application is hereby disposed of.

JUDGE

Comparing Assistant