

(2007) 03 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal M. No. 6179 of 2007 in Criminal A. No. 901-SB of 2001

Salim

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 20, 2007

Acts Referred:

- Constitution of India, 1950 - Article 21
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Citation: (2007) 2 RCR(Criminal) 753

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Advocate: Shammi Khan and Mr. C.S. Rana in Criminal M. No. 32461 of 2005 in Criminal A. No. 752-SB of 2001, for the Appellant; Gurinder Singh Bhandari, DAG, Punjab, for the Respondent

Judgement

S.S. Saron, J.

This order will dispose of Crl. Misc. No. 6179 of 2007 filed by the applicant Salim and Crl. Misc. No. 32461 of 2007 filed by the applicant Sohan Lal seeking suspension of sentence of imprisonment during the pendency of the appeal.

2. The applicants Salim and Sohan Lal along with one Kamaljit Singh alias Pappu were tried for the offence u/s 15 of the NDPS Act. All the accused were found in possession of 16 bags of Poppy Husk each containing 38 kgs 250 grams. The contraband was recovered while Kamaljit Singh accused was driving the tractor trolley and Salim and Sohan Lal (applicants) were sitting on the trolley. The contraband was found to contain poppy husk.

3. It is contended by the learned Counsel appearing for the applicants that the sentence of Kamaljit Singh alias Pappu who was driving the tractor trolley has been suspended by this Court vide order dated 16.6.2001 passed in Criminal Misc. No. 22664 of 2001 in Crl. Appeal No. 685-SBH of 2001. Applicant Salim as per the custody

certificate dated 30.12.2006 has undergone imprisonment for a period of six years, two months and twelve days. During the period of imprisonment the applicant Salim has not availed of any parole. Applicant Sohan Lal has undergone imprisonment of five years and nine months as per custody certificate dated 6.3.2007. This is excluding period of three months and twenty two days of the parole period availed by him. It is contended that keep in view the observations of the Division Bench of this Court in the applicants are entitled to the sentence of their imprisonment being suspended.

4. Learned Counsel appearing for the State has opposed the respective applications seeking suspension of sentence. It is submitted that substantial quantity of poppy husk was recovered and there is no chance of acquittal of the applicants. It is, however, not disputed that both the applicants have undergone more than five years of imprisonment.

5. I have given my thoughtful consideration to the contentions of the learned Counsel appearing for the parties. It is not in dispute that as per the prosecution case the applicants were sitting on the tractor trolley and that Kamaljit Singh alias Pappu was driving the tractor. The said Kamaljit Singh alias Pappu has been granted the concession of bail by suspending his sentence vide order dated 19.6.2001. It is a question to be gone into at the time of hearing the appeal whether the applicants can be said to be in conscious possession of the contraband. In it was held by the Supreme Court in a case where two accused were sitting on the bags and once accused was driving the truck that it was not proved that those sitting on the bags had custody and control of the bags in the absence of proof of anything more cannot be held to be in possession of the goods. Therefore, this aspect as to whether applicants were in conscious possession of the contraband is to be gone into at the time of hearing of the appeal and it would be pre-mature to go into this aspect as this stage.

6. In any case the applicants have been sentenced to rigorous imprisonment for 10 years and fine of Rs. 1 lac. In Daler Singh's case (supra) it was held by a Division Bench of this Court that where the convict has been sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include atleast fifteen months after conviction. Admittedly, the guidelines as laid down in Daler Singh's case (supra) have been met. Article 21 of the Constitution of India envisages right of speedy trial to an accused. The appeal is only an extension of the trial and therefore, the Court is obliged to ensure expeditious disposal of the appeal or pass appropriate orders as and when it is felt that the right of the convict to the guarantee provided under Article 21 has been infringed. The hearing of the appeal in the present case is not likely to mature in the near future. Besides, the sentence of imprisonment of Kamaljit Singh alias Pappu has been suspended. Therefore, the applicants are also entitled to concession of suspension

of their sentence of imprisonment. The applicant Salim is from District Muzafar Nagar and learned Counsel appearing for him has submitted that he was on bail during trial and that he would furnish adequate heavy surety to the satisfaction of learned Chief Judicial Magistrate, Hoshiarpur.

7. Keeping in view the aforesaid position, the sentence of imprisonment of the applicants Salim and Sohan Lal, during the pendency of the appeal, shall remain suspended subject to their furnishing personal bonds and sureties each to the satisfaction of learned Chief Judicial Magistrate, Hoshiarpur.