

SC No. 258/17
State Vs. Saleem @ Mota
FIR No. 235/17
PS Khajuri Khas

16.10.2024

ORDER

1. Vide this order I shall dispose off the application u/s 479(3) BNSS, 2023 moved on behalf of the concerned Jail Superintendent, whereby it was brought to the notice of this Court that the accused Saleem @ Mota had already spent more than half of the maximum sentence provided under the said offences for which he has been facing trial before this Court in the present case.

2. As per the said application u/s 479(3) BNSS, 2023 it was brought to the notice of this Court that as on 30.09.2024, the total period for which the accused has remained in JC after deducting the interim bail period is five years, one month and four days. Furthermore, the accused is also in JC in two other cases besides the present case.

3. Notice was issued to the IO to file the previous conviction/involvement report of the present accused. Same was filed and was perused carefully. As per the said report, the accused has not been convicted in any case so far and he is involved in two other cases bearing FIR no. 1506/2021, PS Nand Nagri and FIR No. 212/2024, PS Gokulpuri.

4. The present case FIR was registered in the year 2017 and

the charges were framed against him on 07.09.2018 and he has been facing trial, which is duly conducted under the provisions of Cr.PC 1973.

5. In light of the decision of the Hon'ble Supreme Court of India in *"In Re-inhuman conditions in 1382 Prisons"* in Writ Petition (Civil) No. 406/2013, vide order dated 23.08.2024, wherein, it was categorically held that the benefit of section 479 BNSS, 2023 shall apply to all under trials in pending cases, irrespective of whether the case was registered against them before 01.07.2024 or not. Therefore, in the facts of the present case, the present application u/s 479(3) BNSS, 2023 is maintainable.

6. It is pertinent to mention here that since the provisions of section 479 BNSS, 2023 was made applicable to cases like the present one, since it is beneficial piece of legislation and the benefit of such a provision shall be granted to the accused. However, there is a non obstante clause mentioned in section 479(2) of BNSS, 2023, wherein, the benefit of section 479(1) BNSS, 2023 must not be granted to the accused person, who is facing an investigation, inquiry or trial in more than one offence or in multiple cases.

7. In the considered opinion of this Court, the benefit of the new provision wherein the under trial prisoner had undergone a period of 1/3rd of a maximum period of imprisonment and if he is a first time offender, then as per the first proviso to section 479(1) BNSS, 2023, he shall be released on bail. It was the

benefit of this proviso, which was not there in the erstwhile corresponding provision of section 436-A Cr.PC, 1973, was extended to the UTPs of the pending trials, which are still continued under the provisions of Cr.PC, 1973, in view of section 531 of BNSS, 2023. However, the accused in the present case is not claiming the benefit of the newly added first proviso to section 479(1) of BNSS, 2023 and therefore, he cannot be saddled with the stringent conditions laid down in section 479(2) of BNSS, 2023.

8. Therefore, in the considered opinion of this Court, as far as the accused is concerned, the provision of statutory bail as enshrined under section 436-A Cr.PC, 1973 is more beneficial and since the trial is pending and continued under the aegis of Cr.PC, 1973 itself, the ground for releasing him on regular bail upon completing more than one half of the maximum punishment prescribed u/s 308 IPC, 1860 is made out in the present case. Therefore, in the considered opinion of this court, the accused has been able to establish his ground to be released on regular bail after satisfying the conditions u/s 436-A Cr.PC, 1973, since there are no submissions made by the Ld. Addl. PP for the State for making out the grounds of his continued detention. Hence, the accused Saleem @ Mota is admitted to regular bail on following conditions :-

- (i) On furnishing of personal bond of **Rs. 20,000/-with one sound local surety** of the like amount, to the satisfaction of this court.
- (ii) He shall not leave the country without the permission

of the concerned Trial Court.

(iii) He shall not try to tamper the evidence or hamper the trial or try to influence the remaining witnesses, in any manner.

(iv) He shall furnish his present and permanent address with supporting documents along with an affidavit/undertaking to inform any change thereof without delay to the SHO concerned.

(v) He shall attend the trial without any single default.

9. Nothing stated herein shall tantamount to any expression or opinion on the merits of the case.

10. Copy of this order be sent to Jail Superintendent, Tihar/Mandoli Jail for necessary intimation to the accused.

11. Application is disposed off accordingly.

12. A copy of this order be given *dasti* to all concerned parties.

(ATUL AHLAWAT)
ASJ (FTC)/North-
East/KKD Courts/
Delhi/16.10.2024