

\$~15

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL. A. 253/2020

OBIANIKA AMOBI CHIJOKE

..... Appellant

Through: Mr. Maninder Singh, Advocate with
Ms. Aekta Vats, Advocate.

Versus

STATE (NCT OF DELHI)

.... Respondent

Through: Mr. Rajesh Manchanda, Advocate for
NCB.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

24.07.2020

Crl. M.(B) No.409/2020 (for suspension of sentence)

By way of the present application, the appellant, who is a convict serving sentence under section 23(c) of the NDPS Act 1985 in case SC No. 9000/16, seeks interim suspension of sentence. The appellant has been sentenced to rigorous imprisonment for 12 years with fine of Rs.2 lacs and default imprisonment of 01 year.

2. The ground on which interim suspension of sentence is sought is that the appellant is a diagnosed case of 'HIV-positive'; and is accordingly in a high-risk, vulnerable category of persons susceptible to coronavirus infection during the prevalent pandemic in Rohini Jail, which has reported several cases of COVID-19 in the recent past. The Narcotics Control Bureau (NCB) had entered appearance as the contesting State-party; and has filed reply dated 08.06.2020 opposing grant of interim suspension of sentence.

3. Nominal roll dated 01.06.2020 and medical status report dated 12.06.2020 have been received from the Jail Superintendent.

4. In the course of submissions made on an earlier date, it transpired that since the appellant is a Nigerian national and has been in prison for long, both his passport and visa have expired; and that therefore, before proceeding to finally consider the present application, in any case he would require a fresh passport and a renewed visa. Accordingly, various directions were sought to facilitate the issuance of a fresh passport from the Nigerian High Commission as also a visa by the Foreigner Regional Registration Officer (FRRO), while the appellant was still in custody.

5. With much effort put in by Mr. Maninder Singh and Ms. Aekta Vats, learned counsel for the appellant, this court is informed that the appellant has now acquired a fresh passport on 14.07.2020 which is valid for 05 years; and also a visa dated 22.07.2020 which is valid for 01 month for the time being. The passport and the visa have been deposited with the NCB on 23.07.2020.

6. Medical status report dated 12.06.2020 received from the Jail Superintendent confirms that the appellant is a known case of 'HIV-positive' and has been under regular treatment from the ART Centre, Dr. BSA Hospital, New Delhi. The medical status report further records that though the appellant was due for a review at the Dr. BSA Hospital in April 2020, due to the coronavirus pandemic and the consequent lockdown, he could not be taken there and is presently being given medication from the jail dispensary. The medical status report of course says that the general condition of the appellant is stable and satisfactory.

7. The nominal roll records that the appellant has undergone about 06 years and 08 months out of his 12-year sentence; and his jail conduct is 'satisfactory'.

8. In the course of hearing on earlier dates, another issue that came-up was whether the appellant would be able to furnish a local address and a local, solvent surety, if he were to be granted interim suspension of sentence. In fulfilment of these conditions, the appellant furnished the name and address of a local, solvent surety and a local address where the appellant would reside if granted interim suspension of sentence. As recorded in order dated 26.06.2020, by way of affidavit of compliance dated 25.06.2020, the NCB has verified the particulars of the local surety as well as the local address.

9. Mr. Maninder Singh submits that since he was personally following-up the issuance of the passport and visa for the appellant, he has been advised that the FRRO has granted the visa for a period of 01 month since the appellant is a convict; but that there is provision to apply for extension of such visa, which would be considered in accordance with the rules and regulations.

10. Mr. Rajesh Manchanda, learned counsel for the NCB opposes grant of interim suspension of sentence on the ground that conditions under section 37 of the NDPS Act have not been met; that before granting interim suspension of sentence, the appellant should be directed to deposit the fine of Rs.2 lacs imposed by the sentencing order; and further, that instead of granting interim suspension of sentence, the appeal itself may be heard and disposed of at an early date. No submission is however made by the NCB on the appellant's medical condition in the context of the prevailing unprecedented situation of the coronavirus pandemic.

11. Upon a conspectus of the foregoing, what transpires is the following:

- (i) the appellant is admittedly a diagnosed case of 'HIV-positive', which puts him in the high-risk and vulnerable category of persons susceptible to coronavirus infection;
- (ii) the appellant has already undergone more than 06 years and 08 months of his 12-year sentence and his jail conduct has been satisfactory;
- (iii) the appellant has *never* been granted bail or suspension of sentence, nor any parole or furlough ever since his incarceration on 28.09.2013;
- (iv) the appellant has furnished a local address and particulars of a local, solvent surety, which have been verified ; and
- (v) the appellant now also has a valid passport and visa, on the basis of which he may legitimately remain outside prison for some time.

12. In view of the foregoing facts and circumstances, this court is persuaded to grant to the appellant *interim suspension of sentence* for a period of 03 (three) weeks from the date of his release, subject to the following conditions:

- a. the appellant shall furnish a personal bond in the sum of Rs.50,000/- with 01 local surety in the like amount from the person as verified in these proceedings by the NCB, to the satisfaction of the Jail Superintendent;
- b. the appellant shall not leave the State of Delhi without permission of the court and shall *ordinarily* reside at the address as verified in these proceedings by the NCB;

- c. the appellant shall furnish to the concerned officer of the NCB a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- d. the appellant shall present himself before the concerned officer of the NCB on every Wednesday between 11.00 to 11.30 AM to mark his presence. However he shall not be kept waiting for more than an hour for this purpose;
- e. the appellant shall not indulge in any act or omission that is unlawful or that may prejudice the pending proceedings in the matter ;
- f. the NCB will issue a written request to the Bureau of Immigration, Ministry of Home Affairs to open a 'Look-Out Circular' against the appellant, to ensure that he does not leave the country without the permission of the court;
- g. the appellant shall also be bound by other conditions, if any, imposed as part of issuance of the visa;
- h. upon expiry of the period of interim suspension of sentence, the appellant shall surrender before the Jail Superintendent.

13. Nothing in this order shall be construed as an expression on the merits of the pending matter.

14. It is made clear that grant of interim suspension of sentence for 03 weeks by this order at this stage, will not stand in the way of the appellant obtaining extension of his visa, subject to rules and regulations, to avail extension of interim suspension in accordance with order dated 13.07.2020 made by a Full Bench of this court in W.P.(C) No.3037/2020 titled ***Court on its own Motion vs. State & Ors.***, or otherwise by orders of the court.

15. This application stands disposed of.
16. Other pending applications, if any, also stand disposed of.
17. A copy of the order be sent to the Jail Superintendent.

Crl. A. No.253/2020

18. List in due course on the Regular Board.

ANUP JAIRAM BHAMBHANI, J.

JULY 24, 2020

Ne