

Court No. - 83

Case :- CRIMINAL APPEAL No. - 2622 of 2020

Appellant :- Mohd. Bashar

Respondent :- Union of India

Counsel for Appellant :- Prem Shankar Kushwaha, Anil Kumar Pandey, Ashish Kumar Singh, Km. Khushi, Pradeep Kumar Singh

Counsel for Respondent :- Krishna Agarwal, Krishna Agarawal

Hon'ble Sanjay Kumar Pachori, J.

Supplementary affidavit is filed and it is taken on record today.

Ms. Khushi Jaiswal, learned counsel for the appellant, Shri Kushagra Agarawal, Advocate holding brief of Shri Krishna Agarawal, learned counsel for CBN and learned A.G.A for the State are present.

The present criminal appeal has been preferred to set aside the judgement and order dated 30.07.2020 passed by Special Judge N.D.P.S Act/Additional Sessions Judge, Court No. 14, Varanasi, in Special Case No. 34 of 2017 by which the trial court convicted the appellant under Section 8/21 of N.D.P.S Act, and sentenced the appellant under Section 8/21 of N.D.P.S Act, for ten years of rigorous imprisonment with fine of Rs. 1,00,000/- and in default of payment of fine for one year of additional imprisonment.

Learned counsel for the appellant submits that the impugned judgement and order has been passed without appreciating the evidence in right perspective and are against the weight of evidence and against the law provided under sub Section (2) of Section 52A of N.D.P.S. Act. It is further submitted that the alleged recovery of 1.050 Kg of heroine is alleged to have been recovered from the appellant and the sample has been collected at the place of recovery. Learned counsel for the appellant further relied upon the judgement of Supreme Court in case of **Mangilal vs. State of Madhya Pradesh, 2023 SCC OnLine SC 862** wherein it has been held that there is no provision in the Act that mandates taking of sample at the time of seizure.

It is further submitted that other co-accused Mohd. Naseem, is acquitted by the trial court under Section 8/21 of N.D.P.S. Act, however no substance was recovered from Mohd. Naseem. It is further submitted that as per FSL report which is exhibit (क 20) the recovered substance is morphine(53.5%) not heroine. It is further submitted that appellant has served seven years two

months and twenty seven days out of total punishment of ten years; which is more than half of the sentence. Learned counsel for the appellant further relied upon the judgment of Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation & Another, (2021) 10 SCC 773.**

The present criminal appeal was admitted on 01.10.2020.

List this case on 23.01.2024.

Till the pendency of appeal, effect and operation of judgement and order dated 30.07.2020 along with 50% realization of fine shall remain stayed. 50% of fine shall be payable within two months after the release of the appellant.

Order on Criminal Misc. Bail Application No. 01 of 2020.

Learned counsel for the appellant submits that the appellant is in jail since 03.09.2016. It is further submitted that appellant has served seven years two months and twenty seven days out of total punishment of ten years; which is more than half of the sentence. Learned counsel for the appellant further relied upon the judgment of Apex Court in **Satender Kumar Antil (Supra).**

In view of the above facts and circumstances, without considering the merits of the case and on account of huge pendency of cases before this Court, there is no likelihood of final hearing of this appeal in near future, the appellant is granted bail.

Let the appellant- **Mohd. Bashir**, be released on bail in Special Case No. 34 of 2017 under Section 8/21 of N.D.P.S Act, Police Station- Central Bureau of Narcotics Preventive and Intelligence cell Ghazipur in Varanasi, District- Varanasi, after executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned.

Order Date :- 30.11.2023

Saurabh