



2025 INSC 190

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO(S).475 OF 2025
(ARISING OUT OF S.L.P. (CRIMINAL) NO(S).5215/2021)

NARCOTIC CONTROL BUREAU

APPELLANT(S)

VERSUS

LAKHWINDER SINGH

RESPONDENT(S)

J U D G M E N TABHAY S. OKA, J

1. Leave granted.
2. Heard Shri S.V. Raju, learned ASG appearing for the appellant.
3. By the impugned order, the High Court has granted relief of suspension of sentence and bail to the respondent/accused pending an appeal against the conviction. The respondent was convicted for an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"). The substantive sentence of the respondent is 10 years of rigorous imprisonment. In the appeal of the year 2021, the High Court noted that the respondent had undergone incarceration for a period of 4 ½ years out of the fixed term sentence of 10 years. As the appeal was not likely to be heard before the completion of the sentence, the High Court granted relief of suspension of sentence and bail to the respondent.
4. The learned ASG relies upon a decision of this Court in the case of *the Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India & Ors.*¹ He submitted that,
1 (1994) 6 SCC731

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as laid down in the decision, unless the respondent had undergone a sentence for the one-half period, he was not entitled to bail pending the final hearing of the appeal against conviction. This is so when he is already held guilty of the offence punishable under the NDPS Act.

5. The relevant part of paragraph 15 and paragraph 16 of the said decision read thus:

"15. ... We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on

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bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by

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depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

16. We may state that the above are intended to operate as one-time directions for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order."

(underline supplied)

While dealing with an extraordinary situation arising out of the long incarceration of undertrial prisoners, this Court directed that in certain cases, the prisoners shall be released on bail after they complete a certain period of imprisonment. The directions issued were by way of a one-time measure. This judgment does not take away the power of the Court to grant regular bail even if the period undergone by a prisoner is less than what is provided in the said judgment. The judgment of this Court cannot be read to mean that the powers of the Court to grant bail have been curtailed. If we interpret the judgment of this Court in such a manner, the Courts will be powerless to grant bail or relief of

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suspension of sentence even if a case is made out on merits. Therefore, in our view, if a case is made out for the grant of suspension of sentence and/or bail in deserving cases on merits, the Court is not powerless to grant relief of suspension of sentence and bail pending an appeal, even if an accused has not undergone half of the sentence. There cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

6. In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.

7. At this stage, the learned ASG appearing for the petitioner submitted that the power of the Court was constrained by Section 37 of the NDPS Act, which is applicable even at the stage of an appeal. He relies upon a decision of this Court in the case of *Dadu vs. State of Maharashtra*². There is no dispute about the fact that the Appellate Court is bound by constraints of Section 37 of the NDPS Act while considering the prayer for the grant of bail during the pendency of an appeal. However, if, in the facts of the case, an accused has undergone a substantial part of the substantive sentence and, considering the pendency of criminal appeals, his appeal is not likely to be heard before the accused undergoes the entire sentence, the Appellate Court can exercise the power of

2 (2000) 8 SCC 437

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releasing the accused on bail pending the appeal. If the relief of bail is denied in such a factual situation only on the grounds of Section 37 of the NDPS Act, it will amount to the violation of the rights of the accused under Article 21 of the Constitution of India.

8. In this case, the appeal preferred by the respondent is not likely to be heard before he undergoes the entire sentence. He has already undergone a substantial part of his 10-year sentence. Therefore, there is no reason to interfere with the impugned order in the facts of the case. The Appeal is, accordingly, dismissed. However, if the respondent misuses the liberty granted to him under the impugned order, the appellant can always apply for cancellation of bail.

.....J.
(ABHAY S. OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JANUARY 29, 2025.