



HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 490 of 2021

1. Eid Mohamad S/o Pir Mohamad Aged About 26 Years Resident Of 28 Near Gaushala Gate Bundi Nenwa Road, Thana City Kotwali Bundi District Bundi Rajasthan.
2. Rahul Khan S/o Babu Khan Aged About 20 Years Resident Of Ward No. 31, Nenwa Road Bundi Thana City Kotwali Bundi District Bundi Rajasthan
3. Dayaram Gurjar S/o Late Lalaji Gurjar Aged About 25 Years Resident Of Village Siyana Thana Dablana District Bundi Rajasthan At Present Resident Of Near Mira Gate Malanmasi Balaji Ward No. 28 Thana City Kotwali Bundi District Bundi Rajasthan.

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Farasgaon, District Kondagaon Chhattisgarh.

---- Respondent

Bilaspur	
29/09/2022	Shri Vikash Pradhan, counsel for the Appellants. Shri B.L. Sahu, Panel Lawyer for the State/Respondent. Heard on I.A.No.1/2021, an application filed under Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence and grant of bail as well as suspension of the fine amount. By virtue of the impugned judgment of conviction and order of sentence dated 24.03.2021 passed by the Special Judge, NDPS Act, 1985, Kondagaon, District Kondagaon(CG) in Special Criminal Case(NDPS Act 1985) No.37/2018 (Crime No.08/2018), the Appellants stand convicted and sentenced in the following manner :-



Conviction	Sentence
U/s 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act, 1985')	R.I. for 10 years and fine of Rs.1,00,000/-, in default of payment of fine 1 year additional R.I.

Learned counsel appearing for the Appellants submits that the trial Court has convicted the Appellants without there being any legally admissible evidence against them. It is contended further that the witness to the seizure memo Ex. P-21, namely, Kamlesh Netam examined as PW1 has turned hostile without supporting the prosecution story. While referring to the statement of Naib Tehsildar, Hardik Shrivastava(PW4), submits further that the samples of contraband article were sent to the Laboratory for its determination without following the standing order No.1/89 framed by the Central Government in exercise of the powers conferred under Section 52-A of the NDPS Act, 1985. It is, therefore, submitted that even without following the mandatory procedure prescribed under the Act, 1985, the Appellants have been held liable with regard to the alleged offence. Further contention of him is that as the Appellants are in jail since 21.01.2018, and if the remaining jail sentence is allowed to run during the pendency of this appeal, the very purpose of filing this appeal would be frustrated and, therefore, the Appellants may be enlarged on bail during the pendency of this appeal. In support, Shri Vikash Pradhan has placed his reliance upon the decision rendered by the Supreme Court in the matter of **Union of India Vs. Bal Mukund And Others**, reported in **(2009) 12 SCC 161**.



On the other hand, learned counsel appearing for the Respondent/State, while opposing the bail application submits that from the possession of the Appellants, 72.164 kg contraband article (Ganja) was recovered, which is more than the commercial quantity as prescribed under the notification issued by the Central Government, and therefore, they are not entitled to be released on bail.

I have heard learned counsel for the parties and perused the entire record carefully.

Having considered the facts and circumstances of the case in the light of the principles laid down by the Supreme Court in the above referred matter, considering further that the Appellants are in jail since 21.01.2018, i.e. they have served more than 4 years and 8 months out of 10 years maximum jail sentence awarded to them and that by considering further that hearing of this appeal will likely to take some more time for its disposal, therefore, I am inclined to allow this application.

Accordingly, the application is allowed and it is directed that the substantive jail sentence imposed upon the Appellants alone shall remain suspended during the pendency of this appeal and they shall be released on bail on each of them furnishing a personal bond in sum of Rs.50,000/- along with two local sureties each of like sum to the satisfaction of the concerned trial Court for their appearance before the Registry of this Court on **22nd November, 2022**. They shall thereafter continue to appear before the trial Court on a date to be given by the Registry of this Court and shall continue to appear on such subsequent dates as are given to them by the said Court till the disposal of this appeal.



It is made clear that the fine amount imposed by the learned Court below vide impugned judgment dated 24.03.2021 in Special Criminal Case(NDPS Act 1985) No.37/2018 (Crime No.08/2018) shall remain intact.

In view of the above, I.A.No.1/2021 stands disposed of.

Let the matter be listed for final hearing in its turn.

Sd/-

(Sanjay S. Agrawal)
Judge

