

THE HIGH COURT OF MADHYA PRADESH

Cr.A. No.8205/2019

(Devendra Singh Dangi Vs. State of M.P.)

Gwalior, dated: 13.02.2020

Shri Swapnil Shukla and Palendra Dangi, learned counsel for the appellant.

Shri Vinay Kumar, learned Panel Lawyer for the respondent/State.

I.A. No.7537/2019, first application for suspension of sentence and grant of bail moved on behalf of the appellant u/S. 389(1) of Cr.P.C. is taken up and considered.

In the present case, appellant has been convicted u/S.8(C) r/w 22(B) of NDPS Act for four years' R.I. with a fine of Rs.5,000/- with default stipulations by the judgment dated 30.08.2019 passed in S.T. No.3/2014, by the Special Judge (NDPS Act), District Ashonagar (M.P.).

It is submitted that provision of Sec.50 of NDPS Act as regards search of person of accused for seizure of narcotic drug which herein is about 12 grams of smack, was not followed to the hilt, for which decision of Apex Court in *Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 AIR (SC) 2123* is pressed into service.

It is seen from the record that the appellant gave an undertaking that he is ready and willing to get his person searched by the Assistant Sub-Inspector without there being any material to demonstrate that search was conducted in presence of any Magistrate or gazetted

officer as held to be mandatory by the Apex Court in Arif Khan (supra).

Consequently, without entering into merits of the matter and looking to the fact that there is no likelihood of early disposal of the appeal in near future, this court is inclined to grant bail to the appellant, by way of suspension of sentence.

Accordingly, without expressing any opinion on the merits, I.A. No.7537/2019 is allowed and it is directed that the jail sentence of the **appellant- Devendra Singh Dangi** will remain under suspension subject to verification that the amount of fine has been deposited, on the appellant's furnishing bail bond of **Rs. 50,000/- (Rupees Fifty Thousand only)** with two solvent sureties of **Rs. 25,000/-** in the like amount to the satisfaction of the concerned CJM, for appearance of the appellant- Devendra Singh Dangi before the concerned **CJM on or before 15.06.2020** and on such further dates as may be fixed by him which shall be of frequency not less than once a year.

In case, the appellant- Devendra Singh Dangi is found absent on any date fixed by the concerned C.J.M. then the said C.J.M. shall be free to issue and execute warrant of arrest for securing his presence without first referring the matter to this Court, provided the Registry of this Court is kept informed.

C.c. as per rules.

(Sheel Nagu)
Judge