



IN THE SUPREME COURT OF INDIA

EXTRAORDINARY CRIMINAL JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO. _____ OF 2025
[Diary No. 30825/2025]

NARAYAN DAS

Petitioner(s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

O R D E R

1. Delay condoned.
2. The petitioner was put to trial in the Court of Special Judge (NDPS Act), Surguja, Ambikapur, District-Surguja (C.G.) in Special Criminal (NDPS) Case No.04/2019 for the offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").
3. It is the case of the prosecution that on 20th September, 2018, the Investigating Officer attached with the Ambikapur, police station received information that two individuals namely Ambika Vishwakarma and Narayan Das (petitioner herein) were standing on the side of the main road of Parsa and were in possession of psychotropic substance in a bag.
4. A search was undertaken of the two individuals and the same resulted in seizure of R.C. Kuff cough syrup in all 143 vials each containing 100ml, Codectus cough Syrup 70 vials each containing 100ml and Elderqurex cough syrup 23 vials each

containing 100ml with labels containing a substance Codeine Phosphate. In all 236 vials were recovered from the possession of the petitioner herein along with the co-accused.

5. At the end of the trial the petitioner herein stood convicted and was sentenced to undergo 12 years of rigorous imprisonment with fine of Rs.1,00,000/-. The petitioner went in appeal before the High Court. The High Court dismissed the appeal. However, while dismissing the appeal, the High Court reduced the sentence of 12 years as imposed by the trial court to 10 years i.e. the minimum as provided under the NDPS Act.

6. We heard Mr. Ashish Pandey, the learned counsel appearing for the petitioner.

7. This is a legal aid matter.

8. Manifold contentions were raised by the learned counsel to persuade us to take the view that the entire seizure was vitiated as the same suffered from serious infirmities.

9. There is no good reason for us to disturb the impugned judgment of the High Court dismissing the appeal. However, there is something which we have noticed and must not be ignored. The High Court seems to be labouring under a serious misconception of law so far as the interpretation of Section 32-B of the NDPS Act is concerned.

10. The High Court from paragraph 25 onwards has observed thus:-

"25. The last contention that has been raised on behalf of the appellants is that without assigning any special reason, the learned trial Court has awarded sentence for a period of 12 years to the appellants, which is more than the minimum sentence prescribed for offence under Section 21(c) of the NDPS Act.

26. Section 32B of the NDPS Act states about the facts to be taken into account for imposing higher than the minimum punishment, which reads as under:

"Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence."

27. The Supreme Court in the matter of Rafiq Qureshi (supra) has held that in a case where the court imposes a punishment higher than minimum relying on an irrelevant factor and no other facts as enumerated in Sections 32B(a) to (f) is present, award of sentence higher than minimum can be interfere with and observed in Para-23 & 24 as under:

"23. In view of the foregoing discussion, we are of the view that punishment awarded by the trial court of a sentence higher than the minimum relying on the quantity of substance cannot be faulted even though the Court had not adverted to the factors mentioned in clauses (a) to (b) as enumerated under Section 32B. However, when taking any factor into

consideration other than the factors enumerated in Section 32B, (a) to (f), the Court imposes a punishment higher than the minimum sentence, it can be examined by higher Courts as to whether factor taken into consideration by the Court is a relevant factor or not. Thus in a case where Court imposes a punishment higher than minimum relying on a irrelevant factor and no other factor as enumerated in Section 32B(a to f) are present award of sentence higher than minimum can be interfered with.

24. In the present case The High Court held that although gross quantity of 8.175 Kg. of Heroin was alleged to have been recovered from the appellant but actual quantity of Heroine which was found to be in possession was only 609.6 gm. The High Court held that since the appellant was found in possession of Narcotic Drugs as per the analysis report to 609.6 gm. which is much higher than the commercial quantity, punishment higher than the minimum is justified. The High Court reduced the punishment from 18 years to 16 years. We, thus, uphold the judgment of the trial court and the High Court awarding the punishment higher than the minimum, however, looking to all the facts and circumstances of the present case including the fact that it was found by the High Court that the appellant was only a carrier, we find that the ends of justice will be sub-served in reducing the sentence from 16 years to 12 years. Thus, while maintaining the conviction of the appellant the appellant is sentenced to undergo 12 years rigorous imprisonment with fine of Rs. 2 lakh and in default of payment of such fine the appellant shall further undergo for a simple imprisonment for six months. The appeal is partly allowed to the extent as indicated above."

28. As such, in view of discussion made hereinabove, in light of Section 32B of the NDPS Act coupled with above-quoted principle of law laid down in Rafiq Qureshi (supra), since no specific or any special reason has been assigned by the learned trial Court for awarding sentence higher than minimum to the appellants for having committed offence under Section 21(c) of the NDPS Act, in the considered opinion of this Court, while affirming the conviction of the appellants for offence under Section 20(c) of the NDPS Act, we deem it appropriate to reduce his sentence of 12 years rigorous imprisonment, as awarded to them by the learned trial Court, to 10 years rigorous imprisonment. So far as the default sentence is concerned, the same is modified to the extent that in case of failure to deposit the fine amount awarded by the trial Court, the appellants shall undergo further rigorous imprisonment for one year instead of three years, as awarded by trial Court. It is ordered accordingly.

29. Consequently, both the criminal appeals are partly allowed to the extent indicated hereinabove. It is stated that the appellants are in jail, they shall serve out the remaining sentence as modified by this Court."

(Emphasis supplied)

11. According to the High Court if the trial court wants to impose sentence more than the minimum prescribed under the NDPS Act, then it is obliged to assign reasons. This according to the High Court is because of the provision of Section 32-B of the NDPS Act.

12. Section 32-B of the NDPS Act reads thus:-

"32-B. Factors to be taken into account for imposing higher than the minimum punishment.—Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offence; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence."

13. While interpreting Section 32-B of the NDPS Act, the High Court also looked into the decision of this Court in the case of *Rafiq Qureshi vs. Narcotic Control Bureau Eastern Zonal Unit*, (2019) 6 SCC 492. According to the High Court, at the time of imposing sentence the trial court need to keep in mind the factors as provided in Clauses (a) to (f) of Section 32-B respectively.

14. We are afraid the understanding of the High Court is not correct. Section 32-B provides that the court in addition to various relevant factors may also take into account the factors as prescribed in Clauses (a) to (f).

15. Therefore, in a given case, the trial court may not find it necessary to consider the factors as prescribed in Section 32-B. Having regard to the quantity of the contraband, the nature of the narcotic or the psychotropic substance, as the case may be, the antecedents, if any, etc., may deem fit to impose punishment which can be more than the minimum. In such circumstances, there was no good reason for the High Court to reduce the sentence from 12 years to 10 years relying on *Rafiq Qureshi* (supra). The dictum as laid down in *Rafiq Qureshi* (supra) has not been understood in its true perspective.

16. In *Rafiq Qureshi* (supra), this Court observed as follows:-

"12. Section 32-B is also inserted by Act 9 of 2001. It is useful to refer to the Statement of Objects and Reasons of Amendment Act 9 of 2001 which is to the following effect:

"Statement of Objects and Reasons.— Amendment Act 9 of 2001.— The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years' rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences."

13. The Statement of Objects and Reasons reveals that the Amendment Act has inserted provisions for rationalisation of the sentencing structure. Section 32-B is a provision which is brought in the statute to rationalise the sentencing structure. Section 32-B from clauses (a) to (f) enumerates various factors for imposing a punishment higher than the minimum term of imprisonment.

14. The submission made by the counsel for the appellant is that unless in the facts of a case, any of the factors mentioned in clauses (a) to (f) are not present, the Court cannot impose punishment higher than the minimum term of the imprisonment. It is submitted that the factors have been brought in the

statute for the purpose of imposing the punishment higher than the minimum, hence, in the absence of any such factor only minimum punishment should be awarded.

15. We have to first see the actual words used in the statute to find out the object and purpose of inserting Section 32-B. The court after conviction of an accused hears the accused and takes into consideration different circumstances of the accused and the offence for awarding the appropriate sentence. Section 32-B uses the phrase

“the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment”.

The above statutory scheme clearly indicates the following:

15.1. The court may where minimum term of punishment is prescribed take into consideration “such factors as it may deem fit” for imposing a punishment higher than the minimum term of imprisonment or fine.

15.2. In addition, take into account the factors for imposing a punishment higher than the minimum as enumerated in clauses (a) to (f).

16. The statutory scheme indicates that the decision to impose a punishment higher than the minimum is not confined or limited to the factors enumerated in clauses (a) to (f). The Court's discretion to consider such factors as it may deem fit is not taken away or tinkered. In case a person is found in possession of a manufactured drug whose quantity is equivalent to commercial quantity, the punishment as per Section 21(c) has to be not less than ten years which may extend to twenty years. But suppose the quantity of manufactured drug is 20 times of the commercial quantity, it may be a relevant factor to impose punishment higher than minimum. Thus, quantity of substance with which an accused is charged is a relevant factor, which can be taken into consideration while fixing quantum of the punishment. Clauses (a) to (f) as enumerated in Section 32-B do not enumerate any factor regarding quantity of substance as a factor for determining the punishment. In the event

the Court takes into consideration the magnitude of quantity with regard to which an accused is convicted, the said factor is relevant factor and the court cannot be said to have committed an error when taking into consideration any such factor, higher than the minimum term of punishment is awarded.

17. This Court in *Sakshi v. Union of India* [*Sakshi v. Union of India*, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645], held that it is a well-settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. A construction which requires for its support addition or substitution of words has to be avoided. In para 19 of the judgment the following was laid down: (SCC p. 537)

"19. It is well-settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear. (Justice G.P. Singh: *Principles of Statutory Interpretation*, pp. 58 and 751, 9th Edn.)"

18. The specific words used in Section 32-B that court may, in addition to such factors as it may deem fit clearly indicates that court's discretion to take such factor as it may deem fit is not fettered by factors which are enumerated in clauses (a) to (f) of Section 32-B.

19. The learned counsel for the appellant has relied on a judgment of the Allahabad High Court in *Raj Ku-*

mar Bajpae v. Union of India [Raj Kumar Bajpae v. Union of India, (2016) 95 ACC 896]. A Single Judge of the Allahabad High Court referring to Section 32-B of the Act stated the following in paras 39 and 40:

"39. After going through the impugned judgment and order very carefully, I find that the trial court while imposing higher than the minimum punishment prescribed under the NDPS Act on conviction under Sections 8/20 of the NDPS Act, upon the appellants has failed even to advert to the factors enumerated in Section 32-B of the NDPS Act. In fact, no reason whatsoever is forthcoming in the impugned judgment which lead the trial court to impose higher than the minimum punishment prescribed under the Act upon the appellants.

40. After going through the evidence on record, I am satisfied that in the present case none of the factors as spelt out in Section 32-B of the Act exist which could have prompted the trial court to award higher than the minimum punishment prescribed under the Act. The sentence awarded to the appellants thus cannot be sustained. While maintaining the conviction of the appellants under Sections 8/20, I allow this appeal in part and modify the sentence awarded to them by the trial court by the impugned judgment and order to 10 years' RI and a fine of Rs 1 lakh and in default of payment of fine the appellants shall be liable to undergo further simple imprisonment for one month. The impugned judgment stands modified accordingly."

20. Although in the above judgment it has not been categorically held that punishment higher than the minimum cannot be awarded unless any of the factors spelt out in Section 32-B are present but the Court proceeded to set aside the award of higher punishment on the above ground. There are two other judgments of the learned Single Judges of the Allahabad High Court which have been brought to our notice. First is the judgment of the Single Judge in Krishna Murari Pal v. State of U.P. [Krishna Murari Pal v. State of U.P., 2015 SCC OnLine All 4909], where the learned

Single Judge in para 13 has considered Section 32-B in the following words: (SCC OnLine All)

"13. The trial court has awarded the sentence of 12 years' rigorous imprisonment and fine of Rs 1 lakh to the appellant-accused under Sections 8/20(b)(ii)(c) of the NDPS Act on the ground that huge quantity of the said contraband (ganja) has been recovered from the possession of the appellant-accused. There is nothing on record to show that the appellant-accused had committed any act which may lie under any of the clauses of Section 32-B of the NDPS Act hereinabove mentioned. But that does not mean that the Court cannot award the sentence more than the minimum sentence in the absence of any of the above conditions mentioned in clauses (a) to (f) because these conditions are in addition to the factors as the Court may deem fit in awarding higher punishment to the accused. In the case at hand, there is nothing on record to show that the appellant-accused and previous criminal history or he is a previous convict and that the appellant is now advanced in years and is aged about 56 years as mentioned in the supplementary affidavit filed on behalf of the appellant-accused. Undisputedly the appellant-accused had licence of the retailer shop of bhang. Thus, regard being had to all the facts and circumstances of the case I think that reduction of sentence of 12 years' rigorous imprisonment awarded to the appellant to the period of imprisonment already undergone by him and in default of payment of fine, reduction of sentence of one year imprisonment to six months' simple imprisonment would meet the ends of justice."

21. Another case which has been relied by the counsel is in Ram Asre v. State of U.P. [Ram Asre v. State of U.P., 2017 SCC OnLine All 2891], where a learned Single Judge of the Allahabad High Court after referring to Section 32-B made the following observation: (SCC OnLine All para 61)

"61. ... In opinion of this Court, if the said section be read with greater attention, it would reveal that the words used in it are "it may deem fit", therefore word "may" would indicate that it would be discretionary for the Court to take the

grounds into consideration which are mentioned in sub-sections (a) to (f) of the said section, while awarding punishment higher than the minimum prescribed. Therefore there is no force found in the argument in this regard made by the learned amicus curiae that in the case at hand the punishment awarded needs to be curtailed keeping in view that the lower court did not take into consideration the above factors."

22. The views expressed by the learned Single Judges in *Krishna Murari Pal* [*Krishna Murari Pal v. State of U.P.*, 2015 SCC OnLine All 4909] and *Ram Asre* [*Ram Asre v. State of U.P.*, 2017 SCC OnLine All 2891] correctly notice the ambit and scope of Section 32-B.

23. In view of the foregoing discussion, we are of the view that punishment awarded by the trial court of a sentence higher than the minimum relying on the quantity of substance cannot be faulted even though the court had not adverted to the factors mentioned in clauses (a) to (f) as enumerated under Section 32-B. However, when taking any factor into consideration other than the factors enumerated in Sections 32-B(a) to (f), the court imposes a punishment higher than the minimum sentence, it can be examined by higher courts as to whether factor taken into consideration by the court is a relevant factor or not. Thus in a case where the court imposes a punishment higher than minimum relying on an irrelevant factor and no other factor as enumerated in Sections 32-B(a) to (f) is present, award of sentence higher than minimum can be interfered with. (Emphasis supplied)

17. The seminal issue in *Rafiq Qureshi* (supra) revolved around the interpretation of Section 32-B of the NDPS Act. In other words, whether the absence of any factors enumerated in Section 32-B in Clauses (a) to (f) restricts the trial courts from imposing sentence higher than the minimum prescribed. This Court in *Rafiq Qureshi* (supra) clarified that the language of

Section 32-B inherently preserves the court's discretion to consider other relevant factors beyond those listed. Specifically, the quantity of the narcotic substance was deemed a pertinent factor warranting a sentence above the statutory minimum, despite the absence of any enumerated aggravating factors in Section 32-B. Referring to *Sakshi vs. Union of India*, reported in (2004) 5 SCC 518, this Court emphasized the principle that legislative intent is derived from the explicit language of the statute, avoiding the insertion of words not present. Since Section 32-B uses "may deem fit" in addition to the enumerated factors, it does not restrict the courts to only those factors but allows broader discretion in sentencing.

18. We may also refer to the decision of this Court in *Gurdev Singh vs. State of Punjab*, reported in (2021) 6 SCC 558. In the said case, it was held that the court should be guided by the factors mentioned in Section 32-B of the NDPS Act and other relevant factors while imposing a sentence higher than the minimum. Therefore, factors mentioned in Section 32-B of the NDPS Act are in addition to other relevant facts, and it cannot be said that the minimum sentence under the NDPS Act is to be considered as a maximum sentence. It was observed at page 564:

"7. Therefore, while imposing a punishment higher than the minimum term of the imprisonment or an amount of fine, the court may take into account the factors enumerated in Section 32-B of the Act referred to hereinabove. However, it is required to be noted (2025:HHC:2309) that Section 32-B of the Act itself further provides that the court may, in

addition to such factors as it may deem fit, take into account the factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine as mentioned in Section 32- B of the Act. Therefore, while imposing the punishment higher than the minimum term of imprisonment or amount of fine, the court may take into account such factors as it may deem fit and also the factors enumerated/mentioned in Section 32-B of the Act. Therefore, on fair reading of Section 32-B of the Act, it cannot be said that while imposing a punishment higher than the minimum term of imprisonment or amount of fine, the court has to consider only those factors which are mentioned/enumerated in Section 32-B of the Act.

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10. Therefore, the quantity of substance would fall into "such factors as it may deem fit" and while exercising its discretion of imposing the sentence/imprisonment higher than the minimum, if the court has taken into consideration such factor of larger/higher quantity of substance, it cannot be said that the court has committed an error. The court has a wide discretion to impose the sentence/imprisonment ranging between 10 years to 20 years and while imposing such sentence/imprisonment in addition, the court may also take into consideration other factors as enumerated in Sections 32-B(a) to (f). Therefore, while imposing a punishment higher than the minimum sentence, if the court has considered such factor as it may deem fit other than the factors enumerated in Sections 32-B(a) to (f), the High Court has to only consider whether "such factor" is a relevant factor or not."

19. It appears that the understanding of the High Court so far as Section 32-B of the NDPS is concerned is that the minimum sentence should be considered as maximum sentence. That is not the correct understanding of Section 32-B of the NDPS Act.

20. Be that as it may. We do not want to interfere with that part of the order of the High Court reducing the sentence.

21. However, we do not find any merit in this petition. The petition, accordingly, fails and is hereby dismissed.

22. Pending application(s), if any, stands disposed of.

.....J.
(J.B. PARDIWALA)

.....J.
(R. MAHADEVAN)

NEW DELHI
17th JULY, 2025.