

The applicants herein have been convicted by the learned Special Judge (NDPS), Shillong in CrI. (NDPS) Case No.49 of 2012 by the judgment and order dated 07.01.2014 for the offences under Section 22(c) and Section 29 of NDPS Act and have been sentenced, inter alia, to rigorous imprisonment for 10 years and fine in the sum of Rs.One lakh and in default to further simple imprisonment for one year.

It is noticed that by the order dated 18.06.2015, this Court deferred consideration of the appeal filed by the appellants while awaiting the decision of the Hon'ble Supreme Court in *Tufan Singh's* case. The order dated 18.06.2015 reads as under:-

"18.06.2015

Mr. R. Deb Nath, learned CGC, appears for the appellants.

Mr. SP Mahanta, learned senior counsel, represents the respondents.

*During the course of hearing, Mr. S.P. Mahanta, learned senior counsel, referred to order of Hon'ble the Apex Court passed in **Tufan Singh v. State of Tamil Nadu reported in (2013) 16 SCC 31**, in particular para 32 thereof. The said paragraph on reproduction would read as;*

"32. Both the said judgments i.e. Raj Kumar Karwal : Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409 : 1990 SCC (Cri) 330 as well as Kanhaiyalal : Kanhaiyalal v. Union of India, (2008) 4 SCC 668 : (2008) 2 SCC (Cri) 474 were thereafter considered by this Court in Noor Aga v. State of Punjab : (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748 where the court has, after considering the entire scheme of the Customs Act, held that the officer under Section 53 of the Customs Act is a police officer and would, therefore, attract the provisions of Section 25 of the Evidence Act. It observed: (Noor Aga case : (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748, SCC p. 457, para 76)

"76. Section 53 of the Act empowers the Customs Officers with the powers of the Station House Officers. An officer invested with the power of a police officer by reason of a special statute in terms of sub-section (2) of Section 53 would, thus, be deemed to be police officer and for the said purposes of Section 25 of the Act shall be applicable."

As exactly the same issue was involved in this case, it may not be proper in the interest of justice to dispose of the matters without awaiting the outcome of the judgment of a larger bench of the Supreme Court as referred to in the aforesaid paragraph. List the matter after pronouncement of judgment in Tufan Singh's case.

Admitted position it is that the decision of the Hon'ble Supreme Court in the aforesaid reference is awaited.

Learned counsel for the applicants would submit that the applicants are in custody for a long length of time and they have not

been prosecuted as principal offenders; and rather, according to the learned counsel, the principal offender ran away from the site and the applicants were alleged to be the driver and handyman in the vehicle in question, said to be carrying Methaqualone (Ketamine) weighing about 50.770 Kgs.

Learned counsel for the applicants submits that hearing and final disposal of the appeal is likely to take a longer time and in the circumstances of the case, the execution of sentence as awarded to the applicants deserve to be suspended until final disposal of the appeal. Learned PP has duly opposed the submissions so made.

Having given thoughtful consideration to the submissions made and having examined the record, we do not feel persuaded to suspend the execution of sentence awarded to the applicants at this stage, particularly looking to the nature of allegations and findings as recorded by the learned Trial Court.

In the totality of circumstances, without any comment on the merits of the case, the prayer for suspension of execution of sentence in relation to the applicants is declined.

The applications stand rejected.

JUDGE

CHIEF JUSTICE

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Item No.6