

(1)

Court No. - 40

Case:-HABEAS CORPUS WRIT PETITION No.-668 of 2016

Petitioner :- Golu @ Sabbir

Respondent :- State Of U.P. & Another

Counsel for Petitioner :- Afzal Ahmad Khan Durrani

Counsel for Respondent :- G.A.

Hon'ble Bala Krishna Narayana,J.

Hon'ble Arvind Kumar Mishra-I,J.

(Delivered by Hon'ble Bala Krishna Narayana,J.)

The arguments of this case concluded on 29.5.2017.

We then passed the following order :-

*"Heard Sri Afzal Ahmad Khan Durrani,
learned counsel for the petitioner and
learned AGA for the State.*

*We will give reasons later. But we
are making the operative order here and
now.*

*The petitioner, Golu@Sabbir shall be
released forthwith unless he is wanted in
any other criminal case. "*

Here are the reasons :-

This writ petition has been filed by the petitioner with the prayer to issue a writ order or direction in the nature of habeas-corpus directing the respondent to release the corpus from the custody of the respondent no. 2, Superintendent of Jail, District Ghaziabad. A further prayer has been made to issue a writ order or direction in the nature of mandamus directing the respondent no. 2 to produce the corpus of the petitioner before this Court and to award damages to the petitioner against the respondent nos. 1 and 2 for his illegal detention by them.

(2)

Briefly stated the facts of this case are that the petitioner was tried for an offence under Section 8/21 of the NDPS Act in Case No. 42 of 1997, State Vs. Golu @ Sabbir arising out of Case Crime No. 707 of 1996, under Section 8/21 of the NDPS Act, Police Station Sahibabad, District Ghaziabad convicted and sentenced the petitioner to ten years rigorous imprisonment and fine of Rs. 1,00,000/- together with default clause under Section 8/21 of the NDPS Act by a judgment and order dated 18.7.2000 passed by Special Judge, NDPS Act, Ghaziabad. The offence which was the subject matter of the aforesaid case had been committed by the petitioner on 22.11.1996.

Apart from the aforesaid case, the petitioner was also convicted and sentenced to ten years rigorous imprisonment and fine of Rs. 1,00,000/- together with default clause under Section 8/21 of the NDPS Act by a judgment and order dated 15.11.2000 passed by ADJ/Special Judge, NDPS Act, Ghaziabad in Case No. 61 of 1999, State Vs. Golu @ Sabbir arising out of Case Crime No. 160 of 1999, Police Station, Sahibabad, District Ghaziabad.668

The petitioner was also convicted and sentenced to imprisonment for life and fine of Rs. 5000/- and in default of payment of fine, two months additional imprisonment under Section 302 IPC by his judgment and order dated 25.01.2005 passed by Additional Sessions Judge, Court No. 13, Ghaziabad in Session Trial No. 602 of 1999, State Vs. Golu @ Sabbir arising out of Case Crime No. 904 of 1998, Police Station Sahibabad, District Ghaziabad.

(3)

Learned Additional Sessions Judge, Special Judge, NDPS Act, Ghaziabad while convicting and sentencing the petitioner to ten years rigorous imprisonment under Section 20 of the NDPS Act, Case Crime No. 707 of 1996 by his judgment and order dated 18.7.2000 had clearly provided that the period of imprisonment already undergone by the petitioner shall include the period during which the petitioner had remained in jail for 23 months during his trial in Case No. 42 of 1997. The petitioner had remained in jail from 23.11.1996 to 31.12.1996 in District Jail, Meerut, from 31.12.1996 to 26.09.1998 in District Jail, Ghaziabad. On 20.05.1997 the petitioner was granted bail in Case Crime No. 707 of 1996 and was actually released on 24.09.1998 after 10 months, but his bail was cancelled and he was taken into custody on 18.06.1999 and sent to jail. He remained in jail till 18.7.2000.

Thus during the trial in Case No. 42 of 1997, the petitioner had remained in jail for two years and eleven months. The sentence of ten years imprisonment awarded to him on his conviction in Case No. 42 of 1997 stood served by him on 13.08.2007 and then sentence of ten years rigorous imprisonment awarded to the petitioner on his conviction in Case No. 61 of 1999 started and which the petitioner had served out after including the period of one year, eight months and nineteen days during which he had remained in jail during his trial in Case No. 42 of 1997 on 24.11.2016. The petitioner was granted bail by this Court in the appeal preferred by him against the judgment and order dated 25.01.2005 passed by Additional Sessions Judge,

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Court No. 13, Ghaziabad in Session Trial No. 602 of 1999, arising out of Case Crime No. 904 of 1998, under Section 302, 394, 411 and 34 IPC on 3.9.2000.

The petitioner's grievance is that although he has served out the substantive sentence as well as the sentence under the default clause awarded to him on his conviction in Case No. 42 of 1997, State Vs. Golu @ Sabbir arising out of Case Crime No. 707 of 1996, under Section 8/21 of the NDPS Act and Case No. 61 of 1999, State Vs. Golu @ Sabbir arising out of Case Crime No. 160 of 1999, under Section 8/21 of the NDPS Act, Ghaziabad yet he has not been released by the respondents despite his being granted bail in the third case by this Court on 3.9.2009.

Learned A.G.A. does not dispute the correctness of the submissions advanced by the learned counsel for the petitioner.

These are the reasons upon which we have allowed the habeas corpus writ petition.

Order Date:- 29.05.2017

SA/KS