

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-44634-2021 in CRA-D-932-2019

Reserved on: 03.03.2023

Date of Decision: 15.03.2023

Talim Khan

. . . . Applicant/Appellant

Vs.

Intelligence Officer

. . . . Respondent

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Mr. Birinder Pal, Advocate
for the applicant-appellant.

Mr. Sandeep Vermani, Addl. A.G., Punjab.

Ms. Varinder Kaur Warraich, Advocate
for the respondent-DRI.

M.S. RAMACHANDRA RAO, J.

This application is filed under section 389 (2) of Cr.P.C. by the applicant seeking suspension of sentence imposed on him by the Judge, Special Court, Ludhiana in NDPS case CIS No. NDPS-224 vide decision dt.09.10.2019 convicting him under section 15(c) of the NDPS Act, 1985 (for short 'the Act') for a period of 12 years and also to pay fine of Rs.1 lakh.

The applicant had challenged the said judgment in CRA-D-932-2019 in this Court. This Court had admitted the Appeal on 04.11.2019 and had stayed the recovery of fine during the pendency of the Appeal.

Notice in the application for suspension of sentence was issued on 26.04.2022.

Custody certificate dt.05.01.2023 was filed by Sh. Sandeep Vermani, Addl. A.G., Punjab which indicate that the applicant had undergone total period of custody of 5 years, 3 months and 23days by that date including custody of 2 years and 24 days post conviction. By now, his period of custody would be 5 years and 6 months and post conviction custody would be 2 years and 3 months.

Counsel for the applicant contended that the applicant had been wrongly convicted by the Special Court under section 15(c) of the Act; that the judgment of the Special Court is perverse; there is no direct evidence and there are several contradictions in the statements of the prosecution witnesses which were not considered properly by the Special Court; in any event no reasons have been assigned by the Special Court for imposing punishment on the applicant beyond the minimum period of 10 years as mandated by Section 32-B of the Act; there is no possibility of the Appeal being heard in the near future and there is every danger of the Appeal becoming infructuous if the applicant is denied benefit of suspension of rest of his sentence. He contended that such relief can be granted in view of the decision of the Division Bench of this Court in *Daler Singh vs. State of Punjab*¹, Full Bench of this Court in *Dalip Singh alias Deepa vs. State of Punjab*², *Mangat Rai vs. State of Punjab*³, *Bhola Singh and others vs. State of Punjab*⁴, *Sandeep Kumar vs. State of Punjab*⁵, *Balbir Singh vs. State of Punjab*⁶ and *Raghvir Singh vs. State of Punjab*⁷. He contended that the applicant had right to speedy trial under Article 21 of the

¹ 2007(1) RCR (Criminal) 316

² 2010 (2) RCR (Criminal) 566

³ Order dt. 17.10.2022 in CRM-40508-2021 in CRA-D-166-DB-2017

⁴ Order dt. 11.11.2022 in CRM-38843-2022 in CRA-D-1136-DB-2018

⁵ Order dt. 08.12.2017 in CRM-30500-2017 in CRA-D-597-DB-2015

⁶ Order dt. 13.12.2021 in CRM-14782-2021 in CRA-D-176-DB-2021

⁷ Order dt. 21.09.2020 in CRM-21619-2020 in CRA-D-1170-DB-2018

Constitution of India which would also extend to the speedy hearing of the Appeal against his conviction by this Court, and once that is not possible, he ought to be granted relief of suspension of sentence.

Written reply was filed by the respondent opposing grant of relief of suspension of sentence to the applicant contending that the seizure in the instant case is of 15 plastic bags of poppy straw of total weight around 600 kilograms; that without any valid permit of licence, the applicant and another were carrying it in a car container truck HR-38-U-6495 and were caught red handed by the DRI Officers on 13.09.2017; that they gave voluntary statements on 14.09.2017 that they were knowingly trafficking the said illegally narcotic product; that the evidence on record justified their conviction by the Special Court; that the Supreme Court in *Budhiyarin Bai vs. State of Chhattisgarh*⁸ had held that no leniency should be shown to accused persons who are found guilty under the NDPS Act and in other cases it has held that period of custody undergone cannot be a criterion to suspend the sentence and grant bail. It is also contended that in view of the stringent provision of Section 37 of the Act, mere passage of time cannot be a reason for suspension of sentence.

Counsel for the respondent relied on the decision in *Rafiq Qureshi vs. Narcotic Control Bureau, Eastern Zonal Unit*⁹ and contended that possession of narcotic drugs much higher than commercial quantity warrants imposition of more than minimum punishment under the Act.

We have noted the submissions of both parties.

In the instant case, the applicant had been convicted under Section 15 (c) of the Act and sentenced to 12 years of custody and fine. His Appeal is

⁸ 2022 (4) RCR (Criminal) 339

⁹ 2019 (6) SCC 492

pending before this Court and there is no likelihood of the said appeal being heard in the near future. He has already undergone 5 and a half years of custody including post conviction custody of more than 2 years.

In **Daler Singh** (1 Supra), a Division Bench of this Court considered the provisions of the Act as well as the Cr.P.C. and also Article 21 of the Constitution of India which confers the right to speedy trial/speedy hearing of the Appeal against conviction conferred on a convict under the NDPS Act, 1985 and laid down the following guidelines:

“29. We, therefore feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under:-

- (i) Where the convict is sentenced for more than ten years for having in his conscious possession commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of six years, which must include atleast fifteen months after conviction.*
- (ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include atleast fifteen months after conviction.*
- (iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include atleast twelve months after conviction.*
- (iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case but his case is not covered by the offences punishable under section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include atleast twelve months after conviction.*

30. *In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the Act.*

32. *The principles enumerated above would, however, have no effect on the concession of bail, otherwise provided under the provisions of the Act or any other law for the time being in force. At the same time these principles would also not affect the right of any convict to apply for interim suspension of sentence on account of any exceptional hardship, which shall be dealt with according to the facts of the each individual case, nor shall it affect the right of convict to seek bail on the merits of case.”*

The Full Bench of this Court in ***Dalip Singh alias Deepa*** (2 supra) reconsidered the decision in ***Daler Singh*** (1 Supra) and affirmed the same holding that the guidelines laid down in ***Daler Singh*** (1 Supra) are only illustrative and concluded as under:

“42. Accordingly, the sum and substance of our discussion are:-

- (a) Long pendency of the trial or an appeal after conviction would be a ground for consideration for grant of bail or suspension of sentence of an accused or a convict as the case may be in the spirit of Article 21 of the Constitution of India;*
- (c) In the case of delay in the disposal of the appeal after an order of conviction, the rule of laying down a condition of undergoing three years or two years imprisonment post-conviction in the case of females for a life convict out of a period of five years or four years in the case of females is not absolute. The convict appellant may show by producing relevant materials including interim orders of the trial Court that the delay in the conclusion of the trial is not attributable to him.*

(d) *While considering the case for release from custody on bail during trial or suspension of sentence pending an appeal the Court is also to consider:-*

....

(iv). *the nature of gravity or heinousness of the crime or cruel mode of its execution”*

It reiterated the principle that where there is a delay in the disposal of an Appeal, the sentence may be suspended.

In the other decisions cited by the counsel for the applicant though commercial quantity or in excess thereof was seized from the accused of narcotic drug or psychotropic substance and he was convicted for a period of more than minimum period of 10 years, on the ground that no special reasons were recorded by the Special Court while awarding sentence more than 10 years as mandated by section 32-B of the Act, relief of suspension of sentence was granted where the custody undergone was more than 4 years including 2years or more after conviction like in the instant case.

In *Rafiq Qureshi* (9 supra), the Supreme Court has held that in an appeal against a judgment of conviction of an accused under the NDPS Act, 1985, 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 of the Act.

Similar view has been expressed in *Gurdev Singh vs. State of Punjab*¹⁰ but that was also a case where the Supreme Court was considering the correctness of a judgment in a criminal appeal rendered by the High Court under the Act.

¹⁰ 2021(6) SCC 558

In *Harmesh Singh vs. Intelligence Officer*¹¹ a Division Bench of this Court considered various decisions of this Court as well as the Supreme Court including the decisions in *A.R. Antulay and others vs. R.S. Naik and another*¹², *Smt. Akhtari Bi vs. State of M.P.*¹³, *Mayuresh Nandkumar Purohit vs. Kaushik Manna and another*¹⁴, *Sheru vs. Narcotics Control Bureau*¹⁵ and *Mossa Koya K.P. vs. State(NCT of Delhi)*¹⁶ and held that an accused had a right to speedy trial and also for speedy disposal of his Appeal if he had been convicted by the Trial Courts; that these rights flow from Article 21 of the Constitution of India; and that even in cases arising under the Act, the said principle cannot be lost sight of while considering grant of bail/suspension of sentence pending Appeal, if the delay is not attributable to him and if he had already undergone a substantial period of custody.

In *Tofan Singh vs. State of Tamilnadu*¹⁷, a 3 judge Bench of the Supreme Court had held that the Act has to be construed in the backdrop of Article 21 and in tune with the fundamental right conferred by it. It declared:

“27. The NDPS Act is to be construed in the backdrop of Article 20(3) and Article 21, Parliament being aware of the fundamental rights of the citizen and the judgments of this Court interpreting them, as a result of which a delicate balance is maintained between the power of the State to maintain law and order, and the fundamental rights chapter which protects the liberty of the individual. Several safeguards are thus contained in the NDPS Act, which is of an extremely drastic and draconian nature, as has been contended by the counsel for the appellants before us. Also, the fundamental rights contained in Articles 20(3) and 21 are given pride of place in the Constitution. After the 42nd Amendment to the Constitution was done away with by the 44th

¹¹ Order dt.31.01.2022 in CRM-43083-2021 in CRA-D-1116-DB-2016

¹² 1992(2) RCR (Criminal) 634 (SC)

¹³ 2001(RCR) Criminal 302 (SC)

¹⁴ 2018(5) RCR (Criminal) 1005 (SC)

¹⁵ 2020 (4) RCR (Criminal) 242 (SC)

¹⁶ 2021 SCC Online SC 3110

¹⁷ (2021) 4 SCC 1

Amendment, it is now provided that even in an Emergency, these rights cannot be suspended — see Article 359(1). The interpretation of a statute like the NDPS Act must needs be in conformity and in tune with the spirit of the broad fundamental right not to incriminate oneself, and the right to privacy, as has been found in the recent judgments of this Court.”

In that case, it was held that reliance cannot be placed on statements of accused under section 67 of the Act and that such statements are inadmissible in evidence.

In the instant case also the prosecution had relied on such statements before the Special Court.

That apart, we have called for information from the Director General of Prisons, Haryana and the Office of the Additional DGP (Prisons), Punjab, Chandigarh which were furnished on 03.03.2023. The said information is annexed to this judgment.

The information supplied indicates that in both the States the number of inmates in prisons is far in excess of the capacity of most prisons. There are substantial numbers of undertrial prisoners including those facing trial under the NDPS Act.

This is an additional factor which is also necessary to be considered at this point of time while considering whether or not to grant relief of suspension of sentence to convicts under the NDPS Act in addition to factors mentioned in various judgments of this Court and the Supreme Court. This has drawn attention of the Supreme Court in several cases.

In *Rama Murthy v. State of Karnataka*¹⁸ the Supreme Court noticed that overcrowding contributes to a greater risk of disease, higher noise levels, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates, and work more onerous for staff, when prisoners are in over capacity.

In view of this additional factor, we are of the considered opinion that the norm of undergoing minimum mandatory period of custody of 6 years for consideration of grant of relief of suspension of sentence in cases where there is conscious possession of commercial quantity of contraband laid down in the decision of *Daler Singh* (1 supra) is liable to slightly relaxed by 6 months while maintaining the minimum custody of 15 months after conviction.

Since in the instant case the applicant has undergone 5 and a half years of total custody and more than 2 years of custody after conviction, and since the applicant will anyway serve the sentence imposed by the Special Court and undergo the full period of custody if the appeal is dismissed, without expressing any opinion on the merits of the contentions of the parties in the Appeal, this application is allowed and the rest of the sentence imposed on the applicant by the Judge, Special Court, is suspended subject to the applicant furnishing bail bonds/surety bonds to the satisfaction of Duty Magistrate/Chief Judicial Magistrate concerned.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

15.03.2023

Mohit Goyal

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes

¹⁸ (1997) 2 SCC 642

As on 28-02-2023

Sr No	Name of Jail	1 Total capacity of each jail	2 Total Population of each jail	3 Number of undertrials confined in each jail	4 Total number of convicts confined in each jail	5 Total number of accused in each jail facing trial under the NDPS Act	6 Total number of convicts sentenced under the NDPS Act
1	Central Jail Amritsar	2266	3027	2496	531	778	123
2	Central Jail Ferozepur	1236	1508	1102	406	618	134
3	Central Jail Patiala	1801	2485	1948	537	830	224
4	Central Jail Ludhiana	3200	4343	3610	733	1188	255
5	Central Jail Bathinda	2375	1622	1211	411	552	198
6	Central Jail Kapurthala	2990	3683	2955	728	1363	283
7	Central Jail Gurdasspur	950	1016	782	234	289	70
8	Central Jail Faridkot	2072	2040	1528	512	790	252
9	Central Jail Hoshiarpur	723	1178	930	248	428	42
10	Central Jail Sh. Goindwal Sahib	2780	1635	1407	228	533	101
11	District Jail Sangrur	650	1128	921	207	451	96
Temporarily Closed							
12	Maximum Security Jail Nabha	462	919	592	327	326	119
13	New District Jail Nabha	850	1102	930	172	364	47
14	District Jail Roopnagar	473	763	578	185	273	86
15	District Jail Mansa	433	404	382	22	55	2
16	Borstal Jail Ludhiana	500	1169	1028	141	428	29
17	District Jail Sri Muktsar Sahib	900	611	515	96	285	39
18	District Jail Barnala	435	54	0	54	0	0
19	Open Air Jail Nabha	75	219	172	47	80	23
20	Women Jail Ludhiana	320	177	153	24	74	13
21	Women Jail Bathinda	288	87	76	11	18	1
22	Sub Jail Moga	75	251	248	3	86	1
23	Sub Jail Patti	204	108	93	15	17	1
24	Sub Jail Fazilka	48	301	264	37	217	26
25	Sub Jail Malerkotla	170	358	312	46	105	9
26	Sub Jail Pathankot	280	30188	24233	5955	10148	2174
Total		26556	30188	24233	5955	10148	2174

Amrinder Ar
Judge/S.3.12

Sukhwinder Singh

Sukhwinder Singh, Superintendent
(Security & Intelligence)
Superintendent of Prisons, Punjab, Chandigarh.
for: Addl. Director, Prisons, Punjab, Chandigarh.

From

The Director General of Prisons, Haryana,
Sector-14, Panchkula.

Annexure-'B'

To

The Advocate General, Haryana,
Chandigarh.

Judge/3-3-23

Subject:

No. 8100/8101 DG Jails/2023/G.3 Dated 02-03-2023
Regarding information NDPS Act Convicts/ Undertrial.

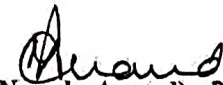
Kindly refer to telephonic talk to Smt. Tanisha Peshwaria, Deputy Advocate General on the subject cited above.

2. The desired information regarding undertrial prisoners and convicted u/s NDPS Act as on 28.02.2023 is as follow:

Sr. No.	Name of Jail	UT NDPS	CT NDPS	TOTAL NDPS
1.	Central Jail, Ambala	191	17	208
2.	Central Jail-1, Hisar	172	50	222
3.	Central Jail-2, Hisar	274	28	302
4.	District Jail, Rohtak	116	21	137
5.	District Jail, Karnal	118	56	174
6.	District Jail, Gurugram	92	27	119
7.	District Jail, Bhiwani	55	4	59
8.	District Jail, Sirsa	334	38	372
9.	Districtjail, Sonipat	29	15	44
10.	District Jail, Jind	85	18	103
11.	District Jail, Kurukshetra	128	8	136
12.	District Jail, Narnaul	27	2	29
13.	District Jail, Rewari	1	0	1
14.	District Jail, Kaithal	80	15	95
15.	District Jail, Faridabad	213	13	226
16.	District Jail, YamunaNagar	86	26	112
17.	District Jail, Palwal	7	0	7
18.	District Jail, Panipat	86	26	112
19.	District Jail, Jhajjar	117	8	125
20.	District Jail, Nuh	45	16	61
	Grand Total	2256	388	2644

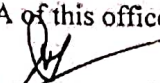
3. The population of prisoner as on 01.02.2023 in the jails of Haryana State is enclosed as annexure-A.

Encls:- As above


(Neerda Anand) 21/3/23
Deputy Superintendent,
for Director General of Prisons, Haryana

Endst. No. 8100/8101 DG Jails/2023/G.3 Dated 02-03-2023

A copy of the above is forwarded to Smt. Tanisha Peshwaria, Deputy Advocate General for information in reference to her telephonic talk with ADA of this office.


(Neerda Anand)
Deputy Superintendent,
for Director General of Prisons, Haryana
Su

