

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 1562 of 2021
(Arising out of SLP(CrI) No 8647 of 2021)

Mossa Koya KP

.... Appellant(s)

Versus

State (NCT of Delhi)

....Respondent(s)

ORDER

1 Leave granted.

2 The appellant has been denied a suspension of sentence under Section 389 of the Code of Criminal Procedure 1973¹ by a Single Judge of the High Court of Delhi by the impugned order dated 18 May 2021.

3 FIR 52 of 2013 was lodged against the appellant for offences punishable under Sections 21, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act 1985² at Police Station Special Cell on 18/19 November 2013. Besides the appellant, two other co-accused were named. The appellant and another co-accused were charged with joint possession of 1 kg of heroin, recovered from a hotel room in Udaipur. The appellant and another co-accused were also charged for conspiracy under Section 29 of the NDPS Act.

1 “CrPC”

2 “NDPS Act”

4 The appellant and the co-accused were acquitted by the Special Judge, NDPS, Patiala House Courts, New Delhi of the charge of joint possession punishable under Section 21(c) of the NDPS Act. However, the appellant was convicted under Section 29 of the NDPS Act and was sentenced to RI for ten years and a fine of Rs 1,00,000 with a default sentence.

5 The appellant has filed an appeal through the Legal Aid Cell before the High Court and applied for suspension of sentence. By the impugned order dated 18 May 2021, the Single Judge has declined to allow a suspension of sentence on the ground that the appellant had not completed fifteen months in Jail after the order of conviction was passed. The High Court noted that, as a matter of fact, according to the nominal roll dated 18 February 2021, he had undergone seven years and two months in custody.

6 In taking the above view, the High Court relied on the following extract from the judgment of the Punjab and Haryana High Court in **Daler Singh v State of Punjab**³:

“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 at least 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 at least 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 at least 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 at least twelve months after conviction.”

7 The Single Judge also observed that in **Mohd Arif alias Guddu v State NCT of Delhi**⁴, the High Court of Delhi has taken the view that where the convict is sentenced for ten years for having in his conscious possession a commercial quantity of the contraband, he shall be entitled to bail after undergoing a total sentence of four years which must include at least fifteen months after conviction.

8 While entertaining the Special Leave Petition on 18 November 2021 and issuing notice, this Court adverted on the following submissions which were urged by learned counsel in support of the petition:

- (i) The petitioner has undergone almost eight years of actual imprisonment out of the total sentence of ten years following the conviction under the provisions of Section 29 of the Narcotics Drugs and Psychotropic Substances Act 1985;
- (ii) As held by this Court in **Surinder Singh alias Shingara Singh v State of Punjab**⁵, the guidelines which were framed by the High Court of Punjab and Haryana in **Dharam Pal v State of Haryana**⁶ are not understood to be observed with mathematical precision; and

4 Crl A 293 of 2017, order dated 19 May 2020

5 (2005) 7 SCC 387

6 (2000) 1 Chan LR 74

- (iii) The judgment in **Daler Singh v State of Punjab**⁷ has similarly been clarified by the Full Bench of the High Court in **Dalip Singh alias Deepa v State of Punjab**⁸.

9 We have heard Ms Tanya Agarwal, counsel appearing on behalf of the appellant and Mr Sanjay Jain, Additional Solicitor General with Ms Praveena Gautam, appearing on behalf of the respondent.

10 As of date, the appellant has undergone 8 years and 5 days of custody.

11 The Additional Solicitor General submitted that it would be appropriate if this Court were to expedite the hearing of the appeal, but since the conviction is under the NDPS Act, the prayer for suspension of sentence may not be considered having regard to the seriousness of the offence.

12 We appreciate the submission of the Additional Solicitor General that offences under the NDPS Act are of a serious nature and the case is at the post conviction stage. Yet the Court cannot be unmindful of the fact that the appellant has undergone 8 years out of the total sentence of 10 years. The appeal is unlikely to be heard early. In all probability, the entire sentence would have been undergone by the time the appeal is heard. The decisions on the basis of which the High Court of Delhi has declined to grant suspension of sentence, are, at the highest, a broad guideline and cannot be placed on the same pedestal as a statutory interdict. With the pendency of the work in the High Court, it may not be feasible to expedite the disposal of the appeal within a short period.

13 In the circumstances, particularly, since the appellant has undergone 8 years out of ten years of the total sentence which has been imposed on him, we are of the

7 Crl Appeal No 259-DB of 2000

8 Crl Appeal No 132/DB of 2007 decided on 18 September 2009

view that a fit and proper case has been made out for the suspension of the sentence under Section 389 CrPC.

14 We accordingly allow the appeal and set aside the impugned order of the High Court. The sentence of the appellant shall remain suspended under Section 389 CrPC, subject to such terms and conditions as may be imposed by the Special Judge, NDPS, Patiala House Courts, New Delhi. The appellant would cooperate in the expeditious disposal of the appeal and shall not apply for adjournment when the matter is taken up.

15 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[A S Bopanna]

New Delhi;
December 06, 2021
-S-

ITEM NO.15 Court 4 (Video Conferencing) SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).8647/2021

(Arising out of impugned final judgment and order dated 18-05-2021 in CRLMB No. 33/2021 passed by the High Court of Delhi at New Delhi)

MOSSA KOYA KP

Petitioner(s)

VERSUS

STATE (NCT OF DELHI)

Respondent(s)

(FOR ADMISSION and I.R. and IA No.146013/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 06-12-2021 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Ms. Tanya Agarwal, Adv.
Ms. Eliza Siram, Adv.
Mr. Anil Kumar, AOR

For Respondent(s) Mr. Sanjay Jain , ASG
Ms. Praveena Gautam, Adv
Mr. Anmol Chandan, Adv.
Mr. Shiv Mangal Sharma, Adv.
Mr. Raghvendra Srivastava, Adv.
Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
- 2 The appeal is allowed in terms of the signed order. The sentence of the appellant shall remain suspended under Section 389 CrPC, subject to such terms and conditions as may be imposed by the Special Judge, NDPS, Patiala House Courts, New Delhi. The appellant would cooperate in the expeditious disposal of the appeal and shall not apply for adjournment when the matter is taken up.

3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)