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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 548/2020

JAMES PASCAL

..... Appellant

Through: Mr. Ajay Verma, Adv.

versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. SC with Mr.
Raghav Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.09.2022

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CRL.M.(BAIL) 8267/2020-SUSPENSION OF SENTENCE

1. This is an application filed seeking suspension of sentence of the appellant against the order dated 08.06.2020 passed by the learned Special Judge (NDPS Act), Patiala House Courts, New Delhi in SC No. 8919/2016 under Section 21(c)/29 NDPS Act.
2. The appellant, in view of his conviction, was sentenced to 10 years rigorous imprisonment and fine of Rs. 1 lakh, which has not been paid, and hence, simple imprisonment for another period of 6 months.
3. As per the Nominal Roll dated 12.01.2021, the appellant has undergone incarceration for a period of 7 years 7 months and 16 days and had an unexpired portion of sentence of 2 years 4 months and 14 days.
4. After the Nominal Roll dated 12.01.2021, another period of 1 year 8 months has elapsed, leaving an unexpired portion of 6 months, and since fine is not paid, another period of 6 months of simple

imprisonment.

5. It is stated that the appellant had given an address, which on verification, was found to be non-existent.
6. This is a classic case where the filing of appeal has been rendered nugatory on account of procedural delays and lack of support to foreigners in getting legal assistance.
7. The appellant has spent almost the entire period of his sentence without his appeal having been heard.
8. I am of the view that in case the sentence of the appellant is not suspended, it will be perversity of justice and perversity of the rights of the appellant. Undergoing the period of 9 years 6 months without having the appeal being heard and being in jail cannot be the essence of our judicial system.
9. The appellant cannot be expected to have an address as he is a foreigner and he has been in jail for a period of 9 years 6 months.
10. In this view of the matter and for the reasons recorded above, I am inclined to allow the application and the sentence of the appellant is suspended forthwith on the following terms and conditions:-
 - i. The appellant shall furnish a personal bond with surety in the form of an F.D. for a sum of Rs. 25,000/- each to the satisfaction of the Jail Superintendent;
 - ii. The appellant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The appellant shall not switch off or change the same without prior intimation to the IO concerned, during the period of suspension of sentence;

- iii. The appellant shall apply for a VISA within a week from the date of his release and his application shall be considered in accordance with law and relevant procedures;
 - iv. The appellant will furnish his permanent address to the IO within 2 weeks of his release and in case he changes his address, he will inform the IO concerned and this Court also;
 - v. The appellant shall appear before the Court as and when the appeal is taken up for hearing;
 - vi. The appellant shall not leave the country and if the appellant has a passport, he shall surrender the same to the Jail Superintendent which shall be given to the appellant for the purpose of VISA (if he so requires). After VISA, the passport shall be re-submitted to the Jail Superintendent;
 - vii. The appellant shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any.
11. At this stage, Mr. Bansal, learned counsel relies upon the judgment of the Apex Court in '*Supreme Court Legal Aid Committee (Representing Undertrial Prisons) vs. Union of India*' [1994 (6) SCC 731] to state that where an under trial prisoner is a foreign national, he shall be released on bail if he has been in jail for not less than 5 years and he furnishes bail in the sum of Rs. 1 lakh with 2 sureties of the like amount.
12. The said judgment is distinguishable, as, in the present case, the appellant has already been convicted and is not an undertrial and further out of the sentence of 10 years, he has already spent a period of 9 years 6 months in jail.

13. A copy of this order be sent to the Jail Superintendent.
14. In the aforesaid terms, the application is allowed and disposed of.

SEPTEMBER 21, 2022 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any