

Izuchukwu Joseph vs State on 27 August, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 286/2019
IZUCHUKWU JOSEPH

Through : Mr.Kanhaiya Singhal, Mr.P
Mr.Chetan Bhardwaj, Mr.R
Jain, Ms.Heena Tangri, M
Kumar and Mr.Udit
Advocate.

versus

STATE

Through : Mr.M.S.Oberoi, APP for St

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 27.08.2021
CRL.M. (BAIL) 494/2019

1. The hearing has been conducted through Video Conferencing.
2. This order be read in continuation of earlier order dated 28.01.2021. The appellant has been convicted under Section 21 (c) of the NDPS Act and sentenced to ten years RI with fine of Rs.1.00 lac; under Section 471 IPC sentenced to three years RI with fine of Rs.10,000/-; and under Section 14 of the Foreigners Act and sentenced to three years RI with fine of Rs.10,000/-.
3. The learned Trial Court has further observed since the offence under NDPS Act; IPC and the Foreigners Act are separate offences, therefore the appellant shall serve consequent sentences under Section 21 (c) of the NDPS Act and Section 14 of the Foreigners Act.
4. I have gone through the nominal roll dated 21.08.2021 which show appellant has already undergone about five years and two months approximately, including the sentence under Foreigners Act.
5. The learned counsel for the appellant submits he has challenged the consequent sentencing in his challenge to sentence so awarded wherein it was directed the sentence under Section 14 of the Foreigners Act and Section 21(c) of the NDPS Act shall run consecutively but no exceptional circumstances have been shown or discussed by the learned Trial Court to award such consecutive sentence.

6. The learned counsel for the appellant has referred to various decision including Benson vs State of Kerala (2016) 10 SCC 307; Satnam Singh Puransing Gill vs The State of Maharashtra 2009 SCC OnLine Bom 52; Pankaj Verma @ Nikhil vs State Crl. A No.611/2018 decided on 20.06.2020; Yamin vs The State (GNCT of Delhi) Crl.A No.769/2015 decided on 11.01.2021 to show the sentence awarded in separate FIRs of different police stations were directed to run concurrently. I need not dwell on the facts of each such case.

7. The learned counsel for the appellant submits in any case, the petitioner has suffered more than five years of imprisonment since the day he was arrested - as confirmed by the nominal roll dated 21.08.2021.

8. The learned counsel also referred to the decision in Daler Singh vs State of Punjab (2007) 1 RCR (Cri) 316 (DB) which inter alia notes:-

"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 at least twelve months after conviction."

9. If we apply the above decision, the appellant in the present case was awarded ten years RI for the conscious possession of commercial quantity of contraband and per Daler Singh (supra), appellant has already undergone four years, inclusive of 15 months after conviction.

10. The appellant was convicted on 01.02.2019, hence more than two years elapsed since his day of conviction.

11. No doubt, nominal rolls show three years have been adjusted under Section 14 of the Foreigners Act, but the fact is, till date in all he has spent more than five years in custody and petitioner has challenged in this appeal the grant of consecutive sentencing and have even prayed for running of such sentences concurrently.

12. In the circumstances, considering the period of custody already undergone and the appeal may take some to come on board for hearing, the sentence of appellant stands suspended during the pendency of appeal and he be released on bail on his executing a personal bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/Duty MM, subject to deposit of entire fine amount with the learned Trial Court/Jail Superintendent and also as pre-condition the appellant should furnish a valid visa in his favour. The appellant shall at liberty to apply for the visa.

13. The appellant is directed to furnish his contact details/address to the Investigating Officer and shall keep his mobile location app open at all time.

14. The application stands disposed of in above terms.

15. Copy of this order be sent electronically to the learned Trial Court / Jail Superintendent for information and compliance.

YOGESH KHANNA, J.

AUGUST 27, 2021 M