

## Mohd. Arif Alias Guddu vs State Nct Of Delhi on 19 May, 2020

**Author: Suresh Kumar Kait**

**Bench: Suresh Kumar Kait**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.293/2017 (URGENT)

MOHD. ARIF alias GUDDU

..... Petitioner

Represented by:

Mr.Ajay Verma, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Represented by:

Mr.Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% 19.05.2020 Crl. M.A. 6538/2020 (Exemption)

1. The hearing has been conducted through video conferencing.
2. Allowed, subject to all just exceptions.
3. Application is disposed of.

CRL.M.(BAIL) 6304/2020

4. The present application has been filed by the applicant/appellant seeking interim suspension of sentence, however, learned counsel for applicant/appellant submits that he is not pressing the present application and prayed that pending application Crl.M.B.1501/2019 may be taken up today for hearing.

5. Accordingly, the present application is dismissed as not pressed and Crl.M.B. 1501/2019 is taken up for hearing today.

6. With the consent of counsel for the parties, present application is CRL.A.293/2017 Page of 1 of 4 taken up for disposal.

7. Vide the present application, applicant/appellant seeks suspension of sentence awarded by Trial Court vide order on sentence dated 17.02.2017 whereby applicant has been sentenced to undergo RI for 10 years for the offence punishable under Section 21(c) of NDPS Act and to pay a fine of Rs.1,00,000/- and in default of payment of fine, he would have to further undergo SI for one year.

8. It is not in dispute that applicant/accused has already undergone more than 5 years out of total sentence of 10 years as is evident from the nominal roll dated 27.09.2019 and order dated 17.10.2019 passed by this Court.

9. In the present case, the substance recovered from the petitioner is 300 gms. of heroin which is commercial quantity.

10. In addition to above, the Division Bench of Punjab & Haryana High Court in the case of Daler Singh Vs. State of Punjab: 2006 SCC OnLine P&H 1591 has held as under:

"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.

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(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."

11. In similar cases, this Court has been taking the consistent view that 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.

12. Keeping in view the sentence already undergone, I hereby suspend the sentence of the applicant during the pendency of the appeal.

13. Accordingly, he shall be released on bail on his furnishing personal bond of 10,000/- before Jail Superintendent concerned and a surety of the like amount to the satisfaction of Trial Court as and when, the Court starts its regular functioning.

14. Applicant shall not involve himself in any other case and in the event of any report against him, this Court would consider the desirability of CRL.A.293/2017 Page of 3 of 4 cancelling the suspension of sentence. Applicant shall also ensure his presence at the time of hearing of the appeal, if not required in any other case.

15. The application is, accordingly, allowed and disposed of.

16. Copy of this order be transmitted to the Jail Superintendent and concerned Trial Court for necessary compliance.

17. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

SURESH KUMAR KAIT, J

MAY 19, 2020/ab

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