

Chima Anthony vs State (Nct Of Delhi) on 29 May, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 156/2023

CHIMA ANTHONY

Through:

STATE (NCT OF DELHI)

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

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CRL.M. (BAIL) 223/2023

1. This is an application filed under Section 389 Cr.P.C. read with Section 482 Cr.P.C. seeking suspension of sentence pending adjudication of the appeal by this Court in proceedings relating to FIR No. 204/2017 registered at Police Station Crime Branch under Section 21 (C) of the NDPS Act and Section 14 of the Foreigners Act.

2. The appellant was convicted vide judgment dated 15.10.2022 and was sentenced to undergo ten years of rigorous imprisonment and fine vide order of sentence dated 18.10.2022 passed by the learned Additional Sessions Judge.

3. Learned counsel for the appellant draws attention of this Court to a previous order of this Court dated 30.01.2023 passed in Crl.A. No. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/10/2023 at 02:03:50 1365/2019 titled as Chima Akuma Vs. State, wherein after advertng to various decisions of the Supreme Court and this Court, the sentence of the appellant was suspended having completed more than half of the sentence granted to him, while the appeal was pending adjudication before this Court. Learned counsel for the appellant seeks to rely upon the said decision stating that the facts of the said case are similar and that as per the nominal roll in this appeal, the appellant has already undergone about five years and six months of sentence, which is more than half of the sentence awarded to him. Further, there are no previous involvements of the appellant and the jail conduct of the appellant has been satisfactory (except for one incident of quarrelling with other inmates in April, 2022).

4. Learned APP for the State however states that the appellant cannot have support of the decision in Daler Singh Vs. State of Punjab 2006 SCC Online P&H 1591, since that also prescribed a condition of having undergone 15 months of sentence post conviction, which was not in this case. Learned counsel for the appellant, however, states that considering in this case it was a longer trial which had concluded only in 2022, the appellant cannot be saddled with such a condition. Further, the said condition has been considered as not absolute by the High Court of Punjab and Haryana in Dalip Singh @ Deepa Vs. State of Punjab 2009 LawSuit (P&H) 1548, where it is stated so in paragraph 40 of the said case:-

"40. We hold that Dharam Pal's rule for the undergoing a period of three years post-conviction is not be an absolute rule. The same principle, would be applicable to cases under the NDPS Act which has its own limitations in view of the provisions of Section 32-A of the NDPS Act and the guide-lines laid down in Daler Singh's case (supra) which are illustrative would continue subject to convicts convicted after long trials may seek suspension of sentence before completing This is a digitally signed order.

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5. Further attention has also been drawn to the decision of this Court to the order dated 24.04.2017 passed in Crl. Appeal No. 1110/2016 Sanaullah Meer v. State, where Dalip Singh @ Deepa (supra) is noted and 'doing away' with the 15 months post conviction condition.

6. As regards fine having not been deposited by the appellant, learned counsel for the appellant draws attention to Section 357(2) of the Cr.P.C. which waives the condition of deposit of fine, in case appeal has been presented, till the decision of the said appeal.

7. The appellant was arrested with recovery of 120 grams of cocaine which is above the commercial quantity on 14.11.2017.

8. Learned counsel for the appellant states that aside from the other grounds of appeal, the appellant has contended that compliance of the mandatory provisions of Section 52A of the NDPS Act have not been complied with and the sampling was done at the stage of seizure by the investigating agency rather than before the Magistrate and relies upon the decision in Amani Fidel Chris v. Narcotics Control Bureau, (2020) SCC OnLine Del 2080 and other recent decisions of Co-ordinate Benches of this Court.

9. Learned counsel for the appellant also adverted to the observations by P. N. Bhagwati J. in Kashmira Singh v. State of Punjab (1977) 4 SCC 291 where the Hon'ble judge observed "it would

indeed be a travesty of justice This is a digitally signed order.

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10. In relation to the grant of bail to an NDPS accused, the decision of the Hon'ble Supreme Court in *Satinder Kumar Antil v. CBI*, (2022) 10 SCC 51 may also be adverted to where even while dealing with special acts including NDPS it has been stated that the rigor as provided under s. 37 of the NDPS Act would not come in the way in cases involving the liberty of the person. Also in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, the Hon'ble Supreme Court held that statutory restrictions per se do not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution of India.

11. The appellant has undergone substantial period of sentence and the appeal is likely to take some time for hearing. In view of the directions of the Hon'ble Supreme Court in *Sonadhar v. The State of Chhattisgarh*, SLP (Crl.) 529/2021 vide order dated 6th October, 2021, as well as *Saudan Singh v. State of Uttar Pradesh*, 2021 SCC OnLine SC 3259 (where the Hon'ble Supreme Court has stated that in cases other than life sentence cases the broad parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail) this Court deems it fit to suspend the sentence of the appellant. It is therefore directed that the sentence of the appellant be suspended pending the hearing of the appeal, on furnishing a personal bond in the sum of 1,00,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court/ CMM/ Duty Magistrate, further subject to the following conditions:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/10/2023 at 02:03:51 i. Appellant will not leave the country without prior permission of the Court. Appellant will deposit the copy of his passport including the visas to the investigating officer.

ii. Appellant shall provide permanent address to the Ld. Trial Court. The appellant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

iii. Appellant shall appear before the Court as and when the matter is taken up for hearing.

iv. Appellant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on

at all times. v. Appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

vi. Appellant shall report to the IO on every first and third Monday of the month at 12 noon and he shall not be kept waiting for more than an hour.

12. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression on merits of the matter.

13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

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14. Accordingly, the application is disposed of.

15. List this appeal in due course in the category of 'Regular Matters'.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J MAY 29, 2023 AK This is a digitally signed order.

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