

Chima Akuma vs State on 30 January, 2023

\$~19

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 1365/2019
CHIMA AKUMA

..... Ap

Through: Mr. Adarsh Priyadarshani, Mr. Amit Dwivedi and Mr. Sachin Tanwar, Advocates.

versus

STATE

..... Respo

Through: Mr. Raj Kumar, APP for the State with SI Manish Kumar, PS Crime Branch, Delhi.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
ORDER

% 30.01.2023

CRL.M. (BAIL) 1227/2021

1. This application has been filed for seeking suspension of sentence pending the adjudication of the appeal by this Court in proceedings relating to FIR number 57/2017 PS Crime Branch, South Delhi under Sections 21 (c) of the NDPS Act r/w Section 474 of the IPC r/w Section 14 of the Foreigners Act

2. As per the judgment dated 2nd August 2019, the appellant was convicted for the said offences and order on sentence dated 8 th August, 2019, awarded a sentence of 10 years RI plus fine of Rs. 1 lac. (RI of 3 months in default of payment). The appellant has been in custody for more than 5 years and as per the Nominal Roll has served the sentence for offences punishable under Section 474 IPC and Section 14 of Foreigners Act.

3. Learned counsel the petitioner has contended that since the appellant has served substantive period of the sentence, more than half of the 10 years awarded and there is no prospect of the appeal being heard in the proximate future, he is seeking regular suspension of sentence. He has relied upon the decision of the Hon'ble Supreme Court in Moosa Koya KP v. State of (NCT of Delhi), Cri. Appeal No. 1562/2021, dated 6th December 2021 by the Hon'ble Supreme Court set aside the decision of the High Court to decline grant of suspension of sentence where the appellant had already undergone a substantial period of sentence (8 years) out of the 10 years awarded. The Hon'ble Supreme Court had noted that the appeal is unlikely to be heard early and with the pendency of the work it may not be feasible to expedite the disposal of the appeal within a short period. Accordingly, the sentence of the appellant in that matter was suspended.

4. Further the counsel for the appellant relied upon the following decisions of the Coordinate Benches of this Court where relying on inter alia the decision of the Daler Singh v. State of Punjab (2006) SCC OnLine P&H 1591, Court has granted suspension of sentence even in cases where the petitioner was a foreign national and had been convicted under the NDPS Act:

Chinazor Festus Mbalugh v. Narcotics Control Bureau, Crl. Appeal No. 76 of 2020, decision dated 01st March, 2021; Paul Chinedu Ugwar v. State (NCT of Delhi), Crl. Appeal No. 448/2015, decision dated 23rd February 2021; Simon Onome Umukoro v. The State, Cri. Appeal No. 754/2014, decision dated 4th February 2020; Nisha @ Putalya v. State NCT of Delhi, Crl. Appeal No. 110/2017, decision dated 2nd March 2020; Mohd. Arif @ Guddu v. State NCT of Delhi, Crl. Appeal No. 293/2017, decision dated 19th May 2020; Chidiebere Kingsley Nawchara v. Narcotics Control Bureau in Crl. Appeal No. 350/2020 decision dated 26th May, 2022.

5. 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 to keep a person in jail for a period of five or six years for an offense which is ultimately found not to have been committed by him".

6. It is noted from the Nominal Roll that the appellate has no prior convictions or previous involvements and his jail conduct has been satisfactory except for one incident. Even applying the principles in Daler Singh (supra), the appellant has undergone a period of more than 15 months after conviction and about 5 years and more in total of his sentence including the time as an under trial.

7. As per the brief facts of the case were that the appellant was arrested with 110 grams of cocaine, it was just above the commercial quantity threshold of 100 grams. The appeal has been admitted on 8th January 2020 and it does not seem probable that it will be taken for hearing any time in the near future.

8. The appeal was preferred on inter alia the ground that there was absence of independent witnesses, personal search memo did not bear any signature of any independent witness, the sample sent to FSL was not with an intact seal as evident from the testimony of PW-2, there was no direction given to PW-2 by the SHO to proceed with the investigation, the appellant was apprehended when the raiding team was in search of another Nigerian citizen, there was no compliance of s. 50 of NDPS Act since the appellant was not proficient in English and no translator was provided.

9. 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.

10. 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:

- 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.

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.

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

12. Accordingly, the application is disposed of.

13. Next date of hearing 09th February, 2023 stand cancelled.

1. List in due course, as per its own turn.
2. Order be uploaded on the website of this Court.

ANISH DAYAL, J JANUARY 30, 2023/RK