

Moosa Koya Kp vs State (Nct Of Delhi) on 18 May, 2021

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

(VIA VIDEO CONFERENCING)

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 13/2021
MOOSA KOYA KP

Through: Mr. S.B.Dandapani, Ad

versus

STATE (NCT OF DELHI)

Through: Ms. Rajni Gupta, APP
with SI Rajendra P.S.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 18.05.2021 CRL.M. (BAIL) 33/2021 (for suspension of sentence)

1. This is an application filed under Section 389 Cr.P.C seeking suspension of sentence of appellant awarded in terms of the judgment dated 30.09.2020 and order on sentence dated 19.10.2020 whereby the petitioner/applicant was sentenced to undergo RI for 10 years for the offence punishable under Section 29 of NDPS Act, and also to pay a fine of Rs.1,00,000/-, and in default of payment of fine to further undergo SI for six months. Benefit of Section 428 Cr.P.C was also given to the petitioner/applicant.

2. While opposing the bail application of the petitioner, learned APP has relied upon the judgment in the cases of Daler Singh Vs. State of Punjab (2006) SCC Online P& H 1591 and Mohd. Arif alias Guddu vs. State NCT of Delhi in Crl. A.293/2017 (dated 19.05.2020) (VIA VIDEO CONFERENCING)

3. As per nominal roll dated 18.2.2021, which is on record, the applicant/petitioner has undergone 7 years and 2 months.

4. The applicant/petitioner was convicted on 30.9.2020 but he has not completed 15 months in jail after the conviction order was passed, which is evident from the nominal roll.

5. In the case of Daler Singh Vs. State of Punjab (2006) SCC Online P& H 1591, wherein the following was held:-

"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 clarified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include at least 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 (VIA VIDEO CONFERENCING) 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."

6. In the case of Mohd. Arif alias Guddu vs. State NCT of Delhi in CrI. A.293/2017 vide order dated 19.05.2020, this Court has taken the 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 at least fifteen months after conviction.

7. In the instant case, it is evident from the nominal roll that the petitioner has not undergone the required period of fifteen months from the date of his conviction, therefore, in these circumstances, petitioner is not entitled to suspension of sentence during the pendency of the appeal. Accordingly, the application for suspension of sentence during the pendency of the appeal is dismissed.

RAJNISH BHATNAGAR, J MAY 18, 2021/ib