

# Chidiebere Kingsley Nawchara vs Narcotics Control Bureau on 26 May, 2022

**Author: Jasmeet Singh**

**Bench: Jasmeet Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 350/2020

CHIDIEBERE KINGSLEY NAWCHARA

..... Appell

Through: Mr. Adarsh Priyadarshi, Mr. Sa  
Tanwar, Adv.

versus

NARCOTICS CONTROL BUREAU

..... Responden

Through: Mr. Subhash Bansal, Sr. Standing  
Counsel with Mr. Shashwat Bansal,  
Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 26.05.2022

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

3. This is an application seeking early hearing of application for suspension of sentence in CRL.M.BAIL 7630 filed in Criminal appeal titled 'Chidiebere Kingsley Nawchara vs. Narcotics Control Bureau

4. For the reasons stated above, application is allowed and the matter is taken up for hearing today.

CRL.M.(BAIL) 7630/2022

5. This is an application seeking suspension of sentence in Criminal Appeal No. 350/2020 titled 'Chidiebere Kingsley Nawchara vs. Narcotics Control Bureau

6. It is submitted that the applicant/petitioner was held guilty of offences u/s 22(c), 23(c) of the NDPS Act and was sentenced to undergo regular imprisonment for 10 years and fine of Rs. 1,00,000/- u/s 22(c) and 23(c) of NDPS Act and in default of payment of fine, simple imprisonment for 6 months. The petitioner has been in jail since 01.10.2013 and out of the sentence of 10 years, he has already underdone sentence for a period of more than 8 years 6 months.

7. The appeal had been admitted on 10.07.2020 and it does not seem probable that the appeal will be taken up for hearing anytime in the near future.

8. The Hon'ble Supreme Court in 'SC Legal Aid Committee Representing Undertrial Prisoners vs. Union of India (1994) 6 SCC 731 has held:

".....We have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under;

i. Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half of the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount. ii. Where the undertrial accused is charged with offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000/- with two sureties for like amount. iii. Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

iv. Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order....."

9. Reliance is also placed on observations of the Hon'ble Supreme Court in CRL.A. 1562/2021 arising out of SLP (Crl) No. 8647/2021 titled 'Mossa Koya KP v. State (NCT of Delhi)' particularly para 12 and 13 which reads as under:

"12 We appreciate the submission of the Additional Solicitor General that offences under the NDPS Act are of a serious nature and the case is at the post conviction stage. Yet the Court cannot be unmindful of the fact that the appellant has undergone 8 years out of the total sentence of 10 years. The appeal is unlikely to be heard early. In all probability, the entire sentence would have been undergone by the time the appeal is heard. The decisions on the basis of which the High Court of Delhi has declined to grant suspension of sentence, are, at the highest, a broad guideline and cannot be placed on the same pedestal as a statutory interdict. With the pendency of the work in the High Court, it may not be feasible to expedite the disposal of the appeal within a short period. 13 In the circumstances, particularly, since the appellant has undergone 8 years out of ten years of the total sentence which has been imposed on him, we are of the view that a fit and proper case has been made out for the suspension of the sentence under Section 389 CrPC."

10. Mr. Bansal, learned counsel for the respondent, states that there is no authentic address of the appellant and the appellant being a foreign national, there is every likelihood that he will flee from the country. In my view, the appellant cannot be having a permanent address as he is a foreign national and has been in jail for the last more than 8 years. He can only have an authentic address if the sentence is suspended.

11. As regards him being a foreign national and fleeing from this country is concerned, the same can be adequately protected.

12. For the reasons stated above, it is directed that the order of sentence dated 09.01.2020 is suspended during the pendency of the appeal, subject to the following conditions:

a) that the appellant will furnish his authentic address to the concerned Investigating Officer;

b) he will share his mobile no. with the concerned Investigating Officer and the mobile no. shall be on at all times;

c) he shall submit the copy of passport and Visa to the Investigating Officer;

d) he will not leave India during the pendency of the trial;

e) shall not commit any crime during the pendency of the appeal;

f) he shall report to the Investigating Officer on every first Monday of the month at 11:00 P.M. and he shall not be kept waiting for more than 1 hour.

g) He shall be released on furnishing a personal bond with an FDR to the tune of Rs. 50,000/- (in the name of Jail Superintendant, Tihar Jail) and personal bond in the same amount to the satisfaction of the Jail Superintendant.

13. The next date of 20.10.2022 stands cancelled and appeal be listed in due course.

JASMEET SINGH, J MAY 26, 2022/dm [Click here to check corrigendum, if any](#)