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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 356/2016

SUNIL @ SUNIL SHARMA

.....Appellant

Through: Mr. Saurabh Kirpal,
Senior Advocate with Mr.
Amit Dwivedi, Mr.
Adarsh Priyadarshi, Mr.
Apoorv Shankar, Mr.
Dhruv Chatrath,
Advocates.

versus

DIRECTORATE OF REVENUE
INTELLIGENCE

.....Respondent

Through: Mr. Gagan Vaswani, Adv.
for Mr. Satish Aggarwala,
SSC

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.03.2025

CRL.M.(BAIL) 975/2023 (for suspension of sentence) in
CRL.A. 356/2016

1. The present appeal is filed challenging the judgment of conviction dated 27.02.2016 and the order on sentence dated 10.03.2016, passed by the learned Trial Court, in SC No. 38A/12, registered by Directorate of Revenue Intelligence.
2. By the judgment of conviction dated 27.02.2016, the appellant was convicted for offences under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
3. By the order on sentence dated 10.03.2016, the appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of ₹1,00,000/-, and in default of payment of fine, to undergo simple imprisonment for a period



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one year.

4. The present application is filed seeking suspension of sentence of the appellant and his release on bail till the disposal of the present appeal.

5. The learned senior counsel for the appellant submits that the sentence of the appellant be suspended as the samples that were drawn in front of the Magistrate under Section 52A of the NDPS Act were never tested.

6. He further submits that in the absence of any testing on the sample drawn in front of the Magistrate, the conviction of the appellant cannot be sustained.

7. He further submits that there is also an inordinate delay in drawing the samples under Section 52A of the NDPS Act which is fatal to the case of the prosecution. He submits that while seizure of the contraband in the present case was allegedly made on 18.05.2012, the application under Section 52A of the NDPS Act was filed belatedly and the samples were drawn before the Magistrate only on 17.12.2012. He submits that the samples drawn before the Magistrate were never sent to forensic lab.

8. He also points out that while it is the case of the prosecution that 1kg of Heroin was recovered and two representative samples of 5g were taken out, it is implausible that 1kg of Heroin was

9. He submits that the learned Trial Court has erroneously relied upon the disclosure statement of the appellant and not considered the non-compliance of the procedure under Section 52A of the NDPS Act.

10. He submits that the appellant has already undergone more than half the sentence in custody and he also has the responsibility of his aged mother who is suffering from various



ailments.

11. The matter was passed over once in the morning at request of the learned proxy counsel for the Directorate of Revenue Intelligence and on the second call also, a request for adjournment is sought on behalf of the Directorate of Revenue Intelligence.

12. The request for adjournment is opposed by the learned counsel for the appellant who presses the present application as the appellant has spent a considerable amount of time in custody.

13. The reply filed by the respondent to the present application is on record. It is stated there that the appellant had not surrendered on time when he was released previously and his sentence ought not to be suspended.

14. It is relevant to note that the appellant is in custody for more than 6 years out of the total sentence of 10 years. Recently, in the case of ***Narcotic Control Bureau v. Lakhwinder Singh* : 2025 SCC OnLine SC 366**, the Hon'ble Apex Court had observed that while the Appellate Court is bound by the rigours of Section 37 of the NDPS Act, however, the Appellate Court can release the accused on bail pending adjudication of the appeal if the accused has undergone a substantive part of the sentence and the appeal is not likely to be heard before completion of sentence. In the said case, the Hon'ble Apex Court upheld the impugned judgment where the High Court had suspended the sentence of the accused therein as he had spent 4½ years out of the total sentence of 10 years as the appeal was not likely to be heard soon.

15. Even though the nominal roll indicates that the appellant had misused the liberty when he was released on bail on an earlier occasion and he had not surrendered on time, the



appellant was ultimately arrested again on 27.02.2023 and is in custody since then. It is stated by the learned senior counsel for the appellant that the appellant did not surrender on time due to some miscommunication by his prior counsel and the same was not deliberate. It is also pertinent to note that the nominal roll indicates that the jail conduct of the appellant has since been satisfactory.

16. The final hearing of the appeal is likely going to take considerable period of time and considering the board of the Court, it cannot be ensured that the matter will be adjudicated before completion of the entire sentence. This Court cannot be unmindful of the time already spent by the appellant in custody. In such circumstances, if the sentence is not suspended, the appellant's right under Article 21 of the Constitution of India will be violated.

17. In view of the aforesaid discussion, considering that the appellant has already spent a considerable period of time in custody, the order on sentence dated 10.03.2016 is suspended till the pendency of the present appeal. The appellant is directed to be released on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned Jail Superintendent, on the following conditions:

- a. The appellant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned Jail Superintendent;
- b. The appellant shall, under no circumstances, leave the country without the permission of the Court;
- c. The appellant shall, upon his release, give his mobile number to the concerned Jail Superintendent and shall



keep his mobile phone switched on at all times;

d. The appellant shall appear before this Court as and when directed.

18. The present application is allowed in the aforesaid terms.

CRL.A. 356/2016 and CRL.M.A. 3844/2018 (for directions) in CRL.A. 356/2016 & CRL.M.A. 6735/2024 in CRL.A. 356/2016

19. The appellant is, however, directed to remain present in Court on the next date of hearing.

20. List on 14.07.2025.

AMIT MAHAJAN, J

MARCH 27, 2025

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