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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 885/2016

VARDHI CHAND @ MOHAN Appellant
Through Mr. P.K. Malik with Mr. Akash
Verma, Advs.

versus

STATE OF NCT OF DELHI Respondent
Through Dr.M.P. Singh, APP.
ASI Abdul Barkat, Narcotics Cell
(Crime Branch)

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **21.09.2017**

Crl. M. (Bail) 793/2017 (suspension of sentence) in CRL.A. 885/2016

The appellant has been convicted under Section 18 of the NDPS and has been sentenced to undergo RI for 10 years, to pay a fine of Rs.1 lakh and in default of payment of fine to suffer SI for one year. It has been submitted that 15 kgs 606 gm of opium was recovered from the possession of the appellant.

The appellant has been in custody for about 6 years by now and his conduct in jail has been satisfactory.

In *Daler Singh vs. State of Punjab: 2014 SCC Online P&H 24096*, a Division Bench of Punjab & Haryana High Court, after taking into account the judgments of the Apex Court in *Maktool Singh vs. State of Punjab: 1999 (2) RCR (Crl.) 130*; *Dadu alias Tulsi Dass vs. State of Maharashtra: 2000 (4) RCR (Crl.) 275*; and a Division Bench of Punjab & Haryana High

Court in ***Tule Ram vs. State of Haryana: 2005 (4) RCR (Crl.) 319***, has laid down the following principles to be adopted for release of convicts on bail after placing them in different categories as hereunder:

“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 at least 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 at least 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 classified 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 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 after conviction.*

30. In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the 'Act'.

31. Similarly a convict who is sentenced for the commission of an offence punishable under section 31 and 31A of the Act shall not be entitled to be released on bail by virtue of this order.”

Considering the aforesaid facts, this Court is inclined to suspend the sentence of the applicant/appellant during the pendency of the appeal.

The sentence of the applicant/appellant is suspended.

Let the applicant/appellant be released on bail, on his furnishing bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Trial Court.

Needless to state that the applicant/appellant shall ensure his presence at the time of hearing of the appeal and shall not evade the process of law. The applicant/appellant shall also not indulge in any unlawful activity during this period. In case, the applicant/appellant is found to be involved in any unlawful activity, it would be open for the Police to apply for cancellation of his bail.

The application stands disposed of.

Dasti.

ASHUTOSH KUMAR, J

SEPTEMBER 21, 2017

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