

Ayush Kumar @ Monti vs. State of H.P.

Cr. Appeal No.255 of 2025

21.08.2025 Present: Mr. Hemant Kumar Vaid, Advocate, for the appellant.

Mr. Tejasvi Sharma and Mr. H.S. Rawat, Additional Advocates General, with Ms. Ranjna Patial, Deputy Advocate General, for the respondent/State.

Cr.MP No.3567 of 2025

2. By way of the present application, indulgence of this Court has been sought to suspend the order of sentence dated 29.03.2025 passed by the Court of learned Special Judge, Una, District Una, H.P. (hereinafter referred to as the 'trial Court'), in NDPS Sessions Trial No.100 of 2023, titled as 'State of H.P. Vs. Ayush alias Monti'.

3. Applicant has preferred the accompanying Criminal Appeal against the judgment of conviction and order of sentence dated 29.03.2025, passed by the learned trial Court, whereby, the learned trial Court has convicted the applicant for the offence punishable under Section 21(b) of the NDPS Act and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.25,000/-. In default of payment of fine, he has been sentenced further undergo rigorous imprisonment for a period of two years.

4. Presently, the applicant is in judicial custody. The custody certificate of the applicant, dated 09.06.2025 has been annexed with the application, in terms of which, the applicant has

undergone 1 year, 8 months and 2 days of imprisonment, as on 09.06.2025.

5. On notice, the State has not filed any reply, but, the prayer has been opposed by the State by tooth and nail.

6. The present appeal, preferred by the applicant, will take sufficient long time for its decision.

7. The sentence which has been imposed by the learned trial Court in this case, falls within the definition of fixed term and according to the decisions of Hon'ble Supreme Court in '**Bhagwan Rama Shinde Gosai and Others Vs. State of Gujarat**', reported in **(1994) 4 SCC 421** and in '**Bhupatji Sartajji Jabraji Thakor Vs. State of Gujarat**', reported in '**2024 SCC OnLine SC 3320**', the term which falls within the definition of 'sentence of fixed term', is liable to be suspended. Relevant paragraph 3 of the judgment in Bhagwan Rama Shinde Gosai's case (supra) is reproduced, as under:-

"3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is

made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

8. Relevant paragraph 7 of the judgment in Bhupatji Sartajji Jabraji Thakor's case (supra), is reproduced, as under:-

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of reappreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.”

9. Considering the factual position of this case and the period of custody, already undergone by the applicant i.e. the substantive sentence of 1 year, 8 months and 2 days, the

applicant is able to make out a case in his favour for suspending the order of sentence.

10. Consequently, application, under consideration is allowed and order of sentence dated 29.03.2025, passed by the learned trial Court, is ordered to be suspended. The applicant, who is presently lodged in District Jail, Una at Bangarh, H.P., is ordered to be released on bail, in this case during the pendency of the appeal, subject to the following conditions:

(i) That the applicant shall furnish personal bond in the sum of Rs.50,000/-, along with one surety of the like amount, to the satisfaction of the learned trial Court, within a period of four weeks from today, with an undertaking that he will surrender before the learned trial Court to serve the remainder substantive sentence, in case of ultimate dismissal of the present appeal, by this Court;

(ii) That the applicant shall deposit the fine amount, if not already deposited.

(iii) The applicant shall not leave the territory of India without the prior permission of the Court.

11. Application is, thus, disposed of.

(Virender Singh)
Judge

August 21, 2025
(subhash)

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