

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. No. 349/2011

Date of Decision : 02.07.2012

JASBIR SINGH Appellant
Through: Mr.Samrat Nigam, Adv.

versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr.Satish Aggarwala, Adv.

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

**Crl.M.A.No.4801/2012
Crl.M.A.No.4802/2012**

1. This order shall dispose of the applications bearing Crl.M.A.nos.4801/12 and 4802/12.
2. So far as the first application bearing Crl.M.A. no.4801/12 is concerned, it is for recalling of the order dated 12.4.12 and the second application bearing Crl.M.A. no.4802/12 is for keeping the order dated 12.4.12 in abeyance till the time the first application is decided.
3. Briefly stated, the facts of the case are that the appellant

was convicted for an offence u/S 20 (b) (ii) (c) of NDPS Act and was sentenced to RI of ten years apart from fine of Rs.1,00,000/- and in default of payment of fine, the appellant was further directed to undergo six months RI. The appellant was given the benefit of Section 428 Cr.P.C. The judgment of conviction and the order of sentence was passed on 15.9.2010 and 17.9.2010 by the learned Special Judge, NDPS, New Delhi.

4. The appellant had filed an application for suspension of sentence along with the appeal which is stated by the respondent, to have been dismissed. The prayer of the appellant for grant of the suspension of sentence and release him on interim bail was also dismissed.
5. The third application filed by the appellant bearing Crl.M.B.no.2235/2011 for suspension of sentence and enlargement on bail was considered by this Court inasmuch as the appellant had contended in the said application that he has served more than six years of the total sentence and out of six years, 15 months were undergone by him, after the date of conviction and

sentence passed by the learned Special Judge. Accordingly, it was contended by Mr.Nigam, the learned counsel that in terms of the case titled **Daler Singh Vs. State of Punjab** 2007(1) C.C. Cases (HC) 252, the appellant has satisfied the twin conditions specified therein of having undergone more than half of the total sentence out of which 15 months were undergone by him, after the date of conviction and sentence and, therefore, he be extended the benefit of suspension of sentence and enlargement on bail, as there is no immediate prospect of the appeal being taken up for regular hearing.

6. The arguments on the applications were heard on 26.3.2012 and the matter was ultimately adjourned to 12.4.2012. On the said date, the arguments were heard and the Court after considering the entire matter in the light of Daler Singh's case (supra) had directed the release of the appellant on bail after suspending his sentence for the remaining period on payment of a fine of Rs.1 lac, so that his appeal could be heard.

7. It is this order which has been assailed by the respondent by way of present application wherein it has prayed that the said order be recalled because it was not pointed out to the Court that in Daler Singh's case, it has been specifically observed that the benefit of suspension of sentence and enlargement on bail may not be extended in cases where the appellant is a foreign national, a proclaimed offender or has been found to be in possession of heavy quantity of narcotics. It was contended by Mr. Aggarwala, that in the instant case, since he was not present, the learned counsel for the appellant did not point out to this Court that a recovery of 148 kgs. of Charas was effected from the appellant and, therefore, in view of the facts of the case, he was not entitled to the benefit of the suspension of sentence and enlargement on bail by the Court.
8. The learned counsel for the respondent in support of his contention has not only referred to the relevant paragraph 30 of the judgment in Daler Singh's case (supra) but has also referred to another judgment of the

Apex Court in case titled **State of Orissa & Anr. Vs. Saroj Kumar Sahoo** 2006(1) JCC 67 (SC) and has contended that the powers u/S 482 Cr.P.C. are the inherent powers of the High Court to do substantial justice and to secure the ends of justice and since in the present case, justice has not been done to the respondent inasmuch as, it did not get an opportunity of pointing out to the Court that this was a case where the benefit of suspension of sentence ought not to have been extended in terms of Daler Singh's case (supra) as it was a case of heavy recovery. Therefore, the order dated 12.4.12 be recalled.

9. The second application has been filed to the effect that during the pendency of the aforesaid application, the operation of the order in question i.e. 12.4.12 be kept in abeyance.
10. Mr.Nigam, the learned counsel for the appellant has filed the reply to the application and contested the plea raised by the learned counsel for the respondent. He has relied upon number of judgments of the Apex Court and our

own High Court to contend that the Supreme Court in case titled **Dadu@ Tulsi Dass Vs. State of Maharashtra** 2001(1) C.C. Cases 91 (SC) has categorically held that Section 32(A) of the NDPS Act 1985, so far as it takes away the power of the Court to suspend the sentence and enlarge the appellant on bail is violative of Article 21 of the Constitution. He has also drawn the attention of the Court to a judgment of the Apex Court in case titled **Man Singh Vs. Union of India**, 2006(2) RCR (Crl.) 73(SC) as well as to Daler Singh's case (supra) to contend that in both these cases, both the Apex Court as well as the Punjab and Haryana High Court had extended the benefit of suspension of sentence to the accused persons, notwithstanding the fact that the recovery of a huge contraband was effected from the accused persons in both the cases.

11. It is further contended by Mr.Nigam that the Delhi High Court in number of orders has extended the benefit of suspension of sentence and enlargement of the appellants on bail despite the fact that heavy recovery

has been effected. Copies of these orders which have been passed by the High Court are attached along with the synopsis. These cases are, Crl.A.no.1370/10, Crl.A. no.466/09, Crl.A.no.820/09 and in Crl.A. no.881/2010.

12. I have carefully considered the submissions made by the learned counsel for the parties and gone through the said judgments.
13. There is no denial of the fact that the legal position has been enunciated by the Apex Court in Man Singh's case. Consequently, the Supreme Court in Dadu's case clearly laid down that despite the fact that Section 32(A) of the NDPS Act prohibits the extension of the benefit of suspension of sentence to a convict in a case of conviction under NDPS Act, except where a conviction has taken place under Section 27 of the Act, the benefit of suspension of sentence and enlargement on bail cannot be given, yet the Apex Court has held that the grant of bail and the suspension of sentence is an inherent power of the Court and a complete embargo on the said power violates the power of judicial review of the

Court and Article 21 of the Constitution of India and, therefore, on case to case basis, it is left to the wisdom of the Court to suspend the sentence and enlarge the appellant on bail.

14. It is on this reasoning that the Apex Court in Man Singh's case (supra) has enlarged the appellant on bail despite the fact that he was sentenced to almost ten years of RI, out of which he has undergone nearly seven years of RI and it was observed that there is no immediate prospect of the appeal being heard in near future.
15. Punjab and Haryana High Court in Daler Singh's case had an occasion to revisit the entire law in this regard and had formulated the broad parameters on the basis of which the Court must consider the application for suspension of sentence and enlargement on bail. No doubt, in the said judgment in para 30, it has been observed that the benefit of suspension of sentence and enlargement on bail should not be extended to a person who is an absconder, a proclaimed offender and a foreign national or who has been found to be *prima facie* in

possession of a huge quantity of contraband. Nevertheless, in the instant case, the only ground which is made as a basis for recall of the order dated 12.4.12, is a heavy recovery of the contraband, which is stated to be to the tune of 148 kgs. of charas. No doubt, the recovery of 148 kgs. of charas from the appellant, is a heavy recovery, but this fact was not brought to the notice of the Court as the learned counsel for the respondent was not present on the day when arguments were concluded. It is possible that had this fact been pointed out the question of grant of suspension of sentence and enlargement on bail may not have been decided in favour of the appellant.

16. But, after having decided the question of suspension of sentence and enlargement of the appellant on bail on the assumption that he was convicted for a serious offence and had undergone nearly six years of sentence, out of which admittedly 15 months were undergone after the date of conviction and sentence, this Court in its wisdom considered to exercise the discretion for grant of the

benefit of suspension of sentence and enlargement on bail, at that point of time in favour of the appellant, as there was no immediate prospect of the appeal being taken up in near future.

17. Now that this fact has been pointed out, I feel that it will be totally inappropriate and inequitable to recall the order of bail of the appellant to confine him to custody again. The equities could be balanced by simply listing the matter for final disposal at an early date, so that the appeal itself be heard on merits and decided.
18. I am cognizant of the fact that various learned Single Judges of this Court have put reliance on Daler Singh's case (supra) and granted, the benefit of suspension of sentence and enlargement on bail to the appellants.
19. For the reasons mentioned above, I feel that the application of the respondent for recalling of the order dated 12.4.2012 only on the ground that a huge quantity of psychotropic substance was effected from the accused, deserve to be disallowed. The interest of the respondent can be suitably protected by fixing up an early date for

final disposal of the matter and also by prohibiting the accused from leaving Delhi.

20. Since the Court is not inclined to recall the order of suspension of sentence and enlargement on bail, there is no question of deferring the operation of the said order. Further, the appellant, as I have been informed, at the time of hearing of the matter, has not been able to furnish the fine amount which was a pre condition for enlargement on bail.
21. For the abovementioned reasons, I feel that keeping in view the totality of circumstances, the applications of the respondent deserve to be disallowed, however, in order to balance the equities, it would be just and proper to list the main case for final disposal on 03.9.2012 in the category of 'After Notice Miscellaneous Matters'.
22. Expression of any opinion hereinbefore may not be treated as an expression on the merits of the case.

V.K. SHALI, J

JULY 02, 2012
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