

CRM-50213-2022 in CRA-S-389 of 2022**SHISH PAL VS STATE OF HARYANA**

Present: Ms. Sharmila Sharma, Advocate, for the applicant/appellant.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

This is second application under Section 389 Cr.P.C. filed on behalf of applicant/appellant seeking suspension of sentence awarded by the Court of Special Judge, Gurugram, whereby applicant/appellant was convicted under Sections 20(B) and 29 of the NDPS Act, 1985 with a direction to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 10,000/- and in default of payment of fine to undergo simple imprisonment for a period of two months in addition to a substantive sentence.

Learned counsel for the applicant/appellant submits that the petitioner has already undergone 1 year, 5 months and 13 days of substantive sentence and there is no likelihood of the main appeal to be heard on merits in near future. She also submits that in the present case, the mandatory provisions of Section 50 NDPS Act, has not been complied with as cane from which the alleged contraband was recovered was not even produced before the Court, besides raising other pleas on merits.

On the other hand, learned State counsel opposes the prayer made in the application by submitting that there are three more cases pending against the applicant/appellant besides one judgment of conviction passed against him.

To this, learned counsel for the applicant/appellant responds that out of three, two of the cases are pending trial wherein petitioner has

already been granted the concession of regular bail whereas, in the third case of conviction order passed against him, he has already undergone 4 months which was the sentence awarded to him. She also submits that in case of trial pertaining to FIR No.19 of 2012 dated 03.02.2012, the applicant/appellant already stands acquitted on 28.08.2019.

I have heard learned counsel for the parties and perused the paper books. I find substance in the submissions made on behalf of applicant/appellant.

Keeping in view the alleged recovery involved in the present case to be 140 Grams of Charas which is non-commercial and the fact that petitioner has already suffered substantive sentence of 1 Year 5 months and 13 days and there is no likelihood of the main appeal to be listed for hearing on merits in near future, he deserves for suspension of his sentence during the pendency of the appeal.

Without commenting upon the merits of the case, the present application is allowed and remaining sentence imposed upon the applicant/appellant is ordered to be suspended during the pendency of the present appeal on his furnishing personal/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate and subject to his not being required in any other case.

16.01.2023
anil

(HARKESH MANUJA)
JUDGE