



2025:DHC:8894



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 16.09.2025**Pronounced on: 08.10.2025**

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CRL.A. 677/2025 & CRL.M.(BAIL)1078/2025**ASHISH****.....Petitioner**

Through: Mr. Karan Verma, Ms. Nayan Maggo, Mr. Yash Arora, Mr. Yuvraj Singh, Advs.

Versus**STATE NCT OF DELHI****.....Respondents**

Through: Mr. Yudhvir Singh Chauhan, APP for the State with SI Anil, PS Seemapuri.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.****CRL.M.(BAIL)1078/2025 (seeking suspension of sentence)**

1. The present application is filed under Section 389(1) Cr.P.C. [Section 430 BNSS, 2023] by the appellant seeking suspension of sentence and release on bail during the pendency of Criminal Appeal No.677/2025 against the Judgement dated 27.01.2025 and Order on Sentence dated 28.01.2025 passed by Ld. Special Judge (NDPS), Shahdara, Karkardooma Courts, Delhi ["trial court"], for the offence



punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”], whereby the appellant was sentenced to Rigorous Imprisonment for 10 years with fine of Rs.1,00,000/-, in default to undergo further 6 months RI.

Factual background

2. Prosecution case, briefly stated, is that on 22.06.2022, the appellant along with co-accused Mukesh Mishra was apprehended near Kalyan Hospital, Seemapuri, while carrying three bags containing commercial quantity of *ganja*. From the appellant, two bags were recovered containing 25.086 kg *ganja*, while co-accused namely Mukesh Mishra allegedly possessed 20.588 kg *ganja*. Subsequently, FIR No.532/2022 under Sections 20/29 NDPS Act was registered at PS Seemapuri, and both accused were arrested.

3. Upon completion of investigation, charges were framed under Section 20(b)(ii)(C) NDPS Act for possession of commercial quantity of *Ganja*. The Ld. trial court vide judgment dated 27.01.2025 and order on sentence dated 28.01.2025, sentenced the appellant and co-accused Mukesh Mishra to rigorous imprisonment for ten years with



fine of Rs.1,00,000 each, and in default, further imprisonment of six months.

4. The appellant being aggrieved by the conviction and sentence, has preferred the instant appeal challenging both the conviction and the sentence awarded to him by the Ld. Trial court. The appeal has already been admitted as CRL.A. no. 677/2025 and is pending final hearing before this Court.

5. The appellant has filed the present application seeking suspension of his sentence and release on bail during the pendency of appeal preferred by him.

Submissions on behalf of the Appellant

6. Learned counsel for the appellant submitted that the conviction is based on conjectures and surmises and that there are procedural lapses in the prosecution case.

7. It is submitted that the conviction by the Ld. Trial court rests solely on testimonies of police officials, without any independent witness, despite recovery being effected in a public place. It is further submitted that no photographs, videography or CCTV footage was



produced, although cameras were installed in the vicinity. Furthermore, the recovery witnesses have made contradictory statements regarding the place of duty, the apprehension of the accused, and even the identification of the alleged contraband.

8. It is contended that there was unexplained delay in drawing samples and forwarding them for FSL examination which is contrary to Section 52A NDPS Act. Such a conviction, unsupported by credible and independent evidence is a grave violation of the appellant's rights under Articles 14 and 21 of the Constitution. It is also submitted that co-accused Mukesh was granted bail by the Court pending trial vide order dated 11.11.2024.

9. The Ld. Counsel submitted that the appeal raises substantial questions of law and fact, particularly in regard to the alleged recovery, procedural lapses under the NDPS Act, and absence of independent witnesses. The appellant has been in custody since 22.06.2022 (i.e. for almost 03 years) and has undergone substantial period of incarceration and his conduct is "Satisfactory" as per the Nominal Roll dated 21.07.2025.



10. The Ld. Counsel urged that the appeal is not likely to be heard in near future, and continued incarceration will cause grave prejudice to the appellant and hence it is prayed that the sentence of the appellant be suspended and he be released on bail.

Submissions on behalf of the State

11. *Per contra*, learned APP opposed the application and submitted that the offence is of grave nature and has a negative impact on the society. It is submitted that the recovery of contraband (*Ganja*) from the appellant is of commercial quantity, and strict rigors of NDPS Act apply. It is argued that the Ld. Trial Court has passed a well-reasoned judgment after appreciating the entire evidence. It is contended that given the serious nature of the offence, the appellant does not deserve the suspension of sentence.

Analysis and Reasoning

12. I have considered the rival submissions and perused the material on record.

13. It is trite that suspension of sentence under Section 389 Cr.P.C. (Section 430 BNSS) is not a matter of right and the nature and gravity



of the offence committed are vital considerations for deciding such application. In the present case, the recovery effected from the appellant is of 25.086 kg *ganja*, which squarely falls within the definition of commercial quantity.

14. The argument regarding non-joining of public witnesses does not render the prosecution case doubtful at this stage. The trial court has relied on consistent testimony of police witnesses, duly corroborated by seizure memos, FSL report, and chain of custody. It is well settled that police officers are not to be disbelieved merely because they are official witnesses, unless motive to falsely implicate is demonstrated as held in *Sunil Tomar V. State of Punjab, Criminal Appeal no. 1690-1691 of 2012*. In *Ajmer Singh V. State of Haryana, 2010 (2) SCR 785* it was held that if public witness could not be joined despite efforts having been made by police, then non-joining of such independent witness is not fatal to the prosecution case. The Hon'ble Supreme Court in *Rohtas V. State of Haryana, JT 2013(8) SC 181* held that police officials are considered to be equally competent and reliable witnesses and their testimony can be relied upon even without



corroboration by an independent witness if same is cogent and reliable.

15. The recovery cannot be doubted merely due to non-joining of independent/public witness. The Ld. Trial Court, while convicting the appellant, has specifically held that the recovery of *ganja* was proved beyond reasonable doubt. The testimonies of recovery witnesses were found credible and consistent. The argument regarding absence of independent witnesses does not by itself vitiate recovery when the testimony of police witnesses is otherwise trustworthy, as held in *State v. Sunil (2001) 1 SCC 652*.

16. The contention regarding non-collection of CCTV footage or lack of videography may constitute a deficiency; however, such omission cannot by itself vitiate seizure proceedings. The present case is of a chance recovery which occurred at about 3 AM. Hence, non-production of CCTV footage cannot be a sole ground to discard recovery, particularly when seizure memos, FSL report and consistent depositions corroborate the prosecution version.



17. Furthermore, reliance placed by the appellant on the order dated 11.11.2024 granting bail to co-accused Mukesh is misplaced. The said observations were made at a pre-conviction stage when the presumption of innocence was available. Now, after conviction on merits, those prima facie observations lose significance.

18. The objective of the NDPS Act, 1985 is to curb the menace of drug trafficking, protect society from the devastating impact of narcotics, and deter offenders by prescribing stringent punishment. The Supreme Court in *Shivani Tyagi v. State of U.P. & Anr.*, (2024 SCC OnLine SC 842) held that in serious offences, suspension should be the exception, not the rule. The mere fact of incarceration or delays in appeal process cannot justify suspension unless accompanied by an assessment of seriousness and other statutory factors.

19. The Supreme Court in *Sonadhar v. State of Chattisgarh*, 2021 SCC OnLine SC 3182 and *Saudan Singh vs. The State of Uttar Pradesh*, 2021 SCC OnLine SC 3259 held that the applications for suspension of sentence may be considered once the appellant has undergone 50% of their sentence prescribed. Perusal of the Nominal



roll of the appellant shows that he was sentenced to undergo a cumulative sentence of RI for 10 years and that at present, he has undergone almost 03 years of his sentence leaving an unexpired portion of almost 07 years. The appellant has not undergone 50% of his sentence and hence he is unfit to take the averment that his sentence be suspended as he has completed 50% of the sentence awarded to him.

20. The Supreme Court in *Jamnadal Vs. State of Rajasthan & Anr., 2025 INSC 935* observed that while deciding an application of suspension of sentence of the accused, the High Court must assess if the convict has a fair chance of acquittal. The relevant paras are reproduced hereinunder:

“10. One would have expected the High Court hearing an application under Section 389 of Cr.P.C. for suspension of sentence to examine whether prima facie there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction. In **Omprakash Sahni v. Jai Shankar Chaudhary and Another**, this Court had the following to say on the scope of Section 389 of the Cr.P.C.

“23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a



court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of subsection (3) neither any specific principle of law is laid down or any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post conviction stage viz. Sections 437, 438, 439 and 389(1)CrPC.

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the



conviction may not be sustainable. The appellate court should not re-appreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or therein the case of the prosecution. Such would not be a correct approach.”

21. In NDPS matters, the interest of justice demands that such convicts should not be released merely on account of the long pendency of appeal, unless exceptional circumstances are shown. No exceptional or compelling circumstance has been brought to the fore that would warrant suspension of sentence at this stage.

22. In the present case, the appellant was in possession of commercial quantity of 25.086 kgs of *Ganja* and was convicted of offence under section 20(b)(ii)(C) of NDPS Act- being an offence of a grave and serious nature. At this stage, after conviction on merits, the presumption of innocence no longer operates in favour of the appellant. This Court is not *prima-facie* convinced on the basis of grounds pressed that appellant has fair chances of acquittal.

23. Given the commercial quantity involved, the minimum sentence prescribed, and the mandatory rigour of Section 37 NDPS Act, this



2025:DHC:8894



Court finds no reason to suspend the sentence of the appellant. The application is accordingly dismissed.

24. Needless to state that any observations made herein are purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression on the merits of the appeal.

CRL.A. 677/2025

25. List in due course.

RAVINDER DUDEJA, J.

8th October, 2025/AK