

(2007) 07 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 15974 of 2007 in Criminal Appeal No. 1052-SB of 2003

Makhan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 17, 2007

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Advocate: G.K. Hundal, for the Appellant; Yashwinder Singh, Assistant Advocate General, Haryana, for the Respondent

Final Decision: Allowed

Judgement

S.S. Saron, J.

The Appellant-applicant Makhan Singh by way of this application u/s 389 Code of Criminal Procedure seeks the suspension of sentence of imprisonment.

2. The applicant Makhan Singh vide judgment and order dated 10.2.2003 has been convicted by the learned Sessions Judge, Sirsa for an offence u/s 15 of the NDPS Act. He has been sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1 Lac and in default of payment of fine to further undergo rigorous imprisonment for two years.

3. The applicant was apprehended by the Police party headed by Gurmeet Singh ASI on 25.11.1997 while he along with others was transporting poppy straw. He was apprehended at the spot. From the Jeep Cr. M. No. 15974/2007 in which the applicant had dumped 40 Kgs. of poppy straw was recovered. The same is non-commercial quantity. As per the custody certificate dated 20.5.2007 filed by the

State by way of affidavit of Superintendent, District Jail, Sirsa the applicant had undergone more than four years of imprisonment. No other case is pending against him. Besides, during the period of imprisonment it is not shown whether he has misused the concession of parole that was granted to him from time to time.

4. A Division Bench of this Court in *Daler Singh v. State of Punjab*, 2007(1) RCR(Cr.) 316 has held that where the convict is sentenced for 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 four years which must include at least 15 months after conviction. The aforesaid guide-lines as laid down by the Division Bench have been fully met in the present case. Besides, the Constitutional mandate of Article 21 of the Constitution of India guarantees a right of speedy trial by the State of persons accused of an offence. An appeal is only an extension of the trial. Therefore, the Courts are obliged to ensure expeditious disposal of the appeals or pass appropriate orders as and when they feel that the right guaranteed by Article 21 of the Constitution of India is infringed. The present appeal is not likely to mature for hearing in the near future. Therefore, keeping in view the facts and circumstances of the present case as also the period undergone by the applicant, it would be just and expedient to suspend his sentence of imprisonment.

5. Consequently, the criminal miscellaneous application is allowed and the sentence of imprisonment of the Appellant shall remain suspended during the pendency of the appeal subject to his furnishing personal bond and surety to the satisfaction of the learned Chief Judicial Magistrate, Sirsa.