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CRM No. 8023 of 2016 in  
CRA No. S-969-SB of 2016 (O/M)

Jugla Ram            Versus            State of Haryana

Present:- Mr. Navkiran Singh, Advocate, for the applicant-appellant.  
Mr. Naveen Sheoran, Deputy A.G. Haryana.

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This order will dispose of the first application, filed by the applicant-appellant, namely, Jugla Ram, under Section 389 Cr.P.C., for suspension of his sentence, during the pendency of the present appeal.

The applicant-appellant was convicted under Section 15 of the NDPS Act, 1985, and was sentenced to undergo rigorous imprisonment of ten years and to pay a fine of Rs. 1,00,000/-, in default thereof, to further undergo rigorous imprisonment for one year by the learned Additional Sessions Judge-cum-Special Judge, , Kurukshetra, vide judgment of conviction and order of sentence dated 12.2.2016.

The custody certificate dated 7.4.2016 has already been filed by the State, which shows that as on date, the applicant-appellant has undergone the actual sentence of 5 years and 4 days. However, he has not undergone the sentence of 15 months after the conviction, as per the Division Bench judgment of this Court in Daler Singh Versus State of Punjab, 2007 (1) RCR (Criminal) 316 . The learned counsel for the applicant-appellant relies upon the Division

Bench judgment of this Court in Dalip Singh Versus State of Punjab, 2009 (1) RCR (Criminal) 657, wherein this Court, after considering the Division Bench judgments of this Court in Dharam Pal Versus State of Haryana, 1994 (4) RCR (Criminal) 600 (P and H) and Daler Singh Versus State of Punjab, 2007 (1) RCR (Criminal) 316 (P and H), took the following view :-

“17. We feel that in cases where accused spend long time in custody as undertrials, it would be unfair to require them to again spend certain fixed period post conviction before sentence can be suspended. Under Section 428 Criminal Procedure Code the period of detention undergone by the accused is set off against the sentence of imprisonment. Therefore, we feel that the undertrial period should be added to the post conviction period and an appellant who has completed 5 years in all should be entitled to suspension of sentence automatically. In the present case, the appellant has served nearly 6 ½ years of sentence as an undertrial and 2 years post conviction. There may be many such cases where accused languish in prison as undertrials and are deprived of suspension of sentence because their conviction is comparatively recent. When the undertrial period is also counted towards sentence then it should not make any difference if the appellant has or has not done three years after conviction.”

In this case also, the applicant-appellant has undergone the actual sentence of 5 years, out of 10 years awarded by the lower

Court. Therefore, I am of the view that in view of the Division Bench judgment of this Court in Dalip Singh's case (supra) and keeping in view the total custody period and also the fact that no other case is pending or decided against the applicant-appellant, the sentence of the applicant-appellant is suspended and he is ordered to be released on bail on his furnishing personal bonds in the sum of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate, Kurukshetra.

Application is disposed of

(KULDIP SINGH)  
JUDGE

10.5.2016  
sjks

सत्यमेव जयते