

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**CRM-24535-2016 IN CRA-S-2153-SB-2012**

**Reserved on: 09.09.2024**

**Date of Pronouncement: 24.09.2024**

NARINDER SINGH ALIAS MINTA -APPLICANT/APPELLANT

VERSUS

STATE OF PUNJAB -RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Gurinder S. Lalli, Advocate  
for the applicant/appellant.

Mr. Ankur Mittal, Advocate (Amicus Curiae) with  
Mr. P.P. Chahar, Advocate  
Ms. Kushaldeep Kaur, Advocate  
Ms. Saanvi Singla, Advocate and  
Mr. Sakal Sikri, Advocate.

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**SURESHWAR THAKUR, J.**

1. During pendency of the criminal appeal bearing No. CRA-S-2153-SB-2012, the convict/appellant filed the present application, whereby, he claimed relief in terms of Section 389 of the Cr.P.C. to the extent that, during the pendency of the criminal appeal (supra), the execution of the substantive sentence of imprisonment imposed upon him, thus be suspended. However, on the present application becoming listed before a learned Single Judge of this Court on 24.09.2016, through an order of even date becoming rendered thereons, therebys the learned Single Judge, till the making of an adjudication vis-a-vis the hereinafter extracted reference, thus proceeded to grant the supra benefit to the appellant, inasmuch as, the learned Single Judge temporarily suspended the execution of the substantive sentence of imprisonment imposed

upon the appellant.

2. Be that as it may, the order passed on 24.09.2016, enclosing therein the reference, whereto an answer is required to be meted, becomes *ad verbatim* extracted hereinafter:-

*"This is an application for suspension of sentence of the applicant-appellant.*

*At the very outset, Deputy Advocate General has relied upon paragraph No. 30 of the judgment of Division Bench of this Court in 'Daler Singh vs State of Punjab, 2007(1) RCR (Criminal) 316', which is as under:-*

*"In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the 'Act'."*

*Learned counsel for the applicant-appellant however relies upon an order of the learned Single Bench in the matter of 'Jasdev Singh & Jassa vs. State of Punjab' decided on 27.05.2015 in 'CRA-S-4427-SB2014'. In this Judgment the learned Single Judge has granted suspension of sentence to a similar recidivist convict by relying upon on decision of the Full Bench of this Court in 'Dalip Singh @ Deepa v. State of Punjab 2010 (2) R.C.R.(Criminal) 566'.*

*In my considered opinion, the judgement of Dalip Singh @ Deepa v. State of Punjab would not be strictly applicable. In Dalip Singh's case (supra), there was no issue with regard to a repeat conviction and that is why the Full Bench considered only paragraph 29 of the judgment of "Daler Singh vs State of Punjab". However no reference has been made to paragraph 30 which has been quoted above.*

*In view of above, I am constrained to record my respectful disagreement. Let this matter be placed before Hon'ble the Chief*

*Justice for consideration by a Larger Bench as to whether the fact of repeat conviction under the NDPS Act would disentitle a convict from suspension of sentence. However since the similarly situated persons in **Jasdev Singh's case** (Supra) have been granted the benefit. I deem it appropriate to grant the benefit of interim suspension of sentence to the applicant till the decision of this issue.*

*Interim bail to the satisfaction CJM/Duty Magistrate Amritsar.”*

3. In **Daler Singh's case** (supra), a coram of two Judges of this Court rendered a decision on 13.12.2006. The said decision was made on an application filed under Section 389 of the Cr.P.C. by the convict/applicant. In paragraph 34 of the said verdict, paragraph whereof becomes extracted hereinafter, the learned Division Bench, after referring to the facts enclosed in the said case, especially the one relating to convict/applicant suffering incarceration of more than seven years since the date of his arrest, thus became coaxed to grant the espoused relief to the convict/applicant.

*“34. Adverting to the facts of the case in hand, the admitted position is that the applicant-appellant is in custody since the date of his arrest. Mr. Boparai after verifying the detention period of the applicant-appellant from the concerned quarters, makes a statement at the Bar that, he by now, has undergone more than seven years of his substantive sentence. We are also of the opinion that keeping in view the present situation, the possibility of the present appeal being heard in near future is very remote. We, therefore, allow the instant criminal miscellaneous and direct that the applicant-appellant shall be released on bail to the satisfaction of Chief Judicial Magistrate, Sangrur on his furnishing adequate surety bonds.”*

4. The hereinabove extracted paragraph states that, given the heavy docket of subjudice appeals, thereupon since there being no possibility of the relevant appeal becoming expeditiously heard, thereby in terms of the principle stated in paragraph 29 of the verdict (supra), paragraph whereof

becomes extracted hereinafter, the learned Division Bench of this Court proceeded to grant the craved for indulgence to the applicant/convict.

*“29. We, therefore, feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under:-*

*(i) Where the convict is sentenced for more than 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 six years, which must include atleast fifteen months after conviction.*

*(ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include atleast fifteen months after conviction.*

*(iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include atleast twelve months after conviction.*

*(iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case' but his case is not covered by the offences punishable under section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include atleast twelve months after conviction.”*

5. Subsequently, the Full Bench of this Court, in case titled as **“Dalip Singh alias Deepa V/s State of Punjab”, 2010(2) R.C.R. (Criminal) 566**, while rendering an answer to the hereinafter extracted reference, set forth the hereinafter extracted principles governing the grant of relief on an application filed under Section 389 of the Cr.P.C.

*“42. Accordingly, the sum and substance of our discussion are :-*

*(a) long pendency of the trial or an appeal after conviction would be a ground for consideration for grant of bail or suspension of sentence of*

*an accused or a convict as the case may be in the spirit of Article 21 of the Constitution of India;*

*(b) In the case of delay in conclusion of the trial the right is of consideration for release on bail and not an automatic right of grant of bail. In the consideration process for the grant of bail on the ground of delay in concluding the trial it shall have to be seen who was responsible for the delay. In case it is the accused who has delayed the trial no relief can be granted. In case of delay by the prosecution, which is oppressive or unwarranted, besides, affecting the right of an accused under-trial in terms of Article 21, remedial orders including grant of bail or fixing a time frame for the conclusion of the trial are to be passed.*

*(c) In the case of delay in the disposal of the appeal after an order of conviction, the rule of laying down a condition of undergoing three years or two years imprisonment post-conviction in the case of females for a life convict out of a period of five years or four years in the case of females is not absolute. The convict appellant may show by producing relevant materials including interim orders of the trial Court that the delay in the conclusion of the trial is not attributable to him.*

*(d) While considering the case for release from custody on bail during trial or suspension of sentence pending an appeal the Court is also to consider :-*

*(i) the nature of the offence;*

*ii) the manner in which the offence has occurred;*

*(iii) the role attributed to the accused or the appellant as the case may be seeking bail or suspension of his sentence;*

*(iv) the nature of gravity or heinousness of the crime or cruel mode of its execution;*

*(v) whether a bail earlier granted had been misused and other criminal cases, if any, pending against the accused or the convict or other cases where he has been convicted;*

*(vi) the propensity and potentiality of the accused or the convict indulging in criminal activities while on bail;*

*(vii) the likelihood of an accused in case of an under-trial or a convict prisoner after his conviction to abscond or being a proclaimed*

*offender, besides, in case of an under-trial prisoner the likelihood of his interfering in the trial of the case by influencing the witnesses or tampering with the evidence.*

*(viii) conduct of an accused or a convict while in jail and in the case of a convict whether he has misused the concession of parole or furlough;*

*(ix) whether the concession of bail, parole or furlough earlier granted has been misused;*

*these and other circumstances which are illustrative and not exhaustive are to be adverted to and taken into consideration at the time of consideration of an application seeking bail by an under-trial or suspension of sentence by a convict after his conviction.*

*(e) In respect of devising means to prevent the accused or a convict to abscond the Court accepting the bail bonds may in a case where the prisoner is likely to abscond may impose strict conditions of furnishing heavy surety and number of sureties, besides, asking for respectables of the locality or area of the accused or convict to furnish surety not only with regard to misuse of the concession of bail or suspension of sentence but also of maintaining peace and good behaviour while at large and not indulging in criminal activities while at large.*

*(f) We also gave serious thought on certain procedural aspects of bail applications. We feel that after giving our detailed judgment, clarifying the various aspects of rights of citizens under Art 21, the trial courts and the High Court may well get inundated with a large number of applications for bail. This will be a happy development. But some streamlining of hearing of bail applications is necessary. We would like to curb hearing of bail applications, to prevent multiple applications being filed by under-trials and convicts. We feel that repeated filing of applications for bail give rise to many difficulties. These tend to clog the courts, are often misused, raise unrealistic expectations among the under-trials and convicts which give rise to malpractice. Subsequent applications amount to a review of the previous order of dismissal of bail, which is not permissible in criminal cases. Therefore, we direct that under-trials and convicts shall get only one hearing for bail on merits and if they fail then, only one hearing for bail on the basis of long custody.*

(g) *We would also like to re-iterate that the suggestion given by the Division Bench, in the reference order, to constitute a "Criminal Justice Monitoring Board" is a good way forward to ensure speedy trials. This should be seriously considered by the States of Punjab & Haryana and the Union Territory of Chandigarh, so that all the departments of the criminal justice system run in tandem with each like a well-oiled machine. This is the only way to ensure that citizens' right to speedy trials, enshrined in Article 21 of the Constitution of India, are fully realised and not ignored or violated."*

6. Moreover, in the hereinafter extracted paragraph of the verdict (supra), the Full Bench proceeded to overrule the proposition of law enclosed in case titled as "***Dharam Pal V/s State of Haryana***", 1999(4) RCR (Criminal) 600, by declaring qua the therein encapsulated rule appertaining to the spending of three years' incarceration by the convict, thus post the verdict of conviction, hence being imperative rather for the convict well claiming a relief qua an order becoming made for suspending the execution of the substantive sentence of imprisonment, as become imposed upon him, rather not being an absolute rule for making decision upon an application filed under Section 389 of the Cr.P.C. by the convict, post a verdict of conviction becoming made upon him, and, during the pendency of an appeal thereagainst before this Court. Resultantly, the said principle was declared to be applicable to even cases covered under the Narcotic Drugs and Psychotropic Substance Act. Moreover, resultantly therebys, a dilution was made vis-a-vis the principle settled in ***Daler Singh's case*** (supra) for the craved for indulgence under Section 389 of the Cr.P.C., thus becoming endowed upon the convict, who prefers an appeal before this Court against the verdict of conviction, to the extent that, the craved for indulgence of bail by a convict, whose appeal is subjudice before this Court, rather becoming endowable to him, but only if he

has undergone custody of three years, thus post the verdict of conviction becoming made against him.

*“40. We hold that Dharam Pal's rule for the undergoing a period of three years post-conviction is not be an absolute rule. The same principle, would be applicable to cases under the Narcotic Drugs And Psychotropic Substances Act which has its own limitations in view of the provisions of Section 32A of the Narcotic Drugs and Psychotropic Substances Act and the guide-lines laid down in Daler Singh's case (supra) which are illustrative would continue subject to convicts convicted after long trials may seek suspension of sentence before completing the requisite periods. The aforesaid guidelines are in consonance with the spirit of Article 21. Where there is a delay in the disposal of an appeal, sentence may be suspended and exception for which has been carved out as held by a Full Bench of this Court in Tule Ram's case (supra).”*

7. In other words, the prolonged pendency of an appeal against the verdict of conviction became the underpinning, thus for the allowing of the craved for indulgence, as set forth in an application filed under Section 389 of the Cr.P.C. by the convict/applicant, rather than *stricto sensu* the spending of a period of three years of incarceration by the convict, as earlier became declared in *Daler Singh's case* (supra).

8. In other words, the emanation of material(s) thus displaying that, a convict's appeal is unlikely to be heard in the shortest possible time, becomes the governing principle. Therefore, even if the convict has not suffered incarceration for three years post the verdict of conviction becoming made, which thus becomes the stated principle in *Dharam Pal's case* (supra) for regulating a contemplated decision becoming made upon an application filed under Section 389 of the Cr.P.C., thus suffers some dilution.

9. The said underlinings become grooved in Article 21 of the Constitution of India, whereby, a convict is entitled to a speedy trial, given the apposite appeal being a continuation of the trial, as becomes entered against him.



10. Be that as it may, neither in the verdict rendered by the Division Bench of this Court in *Daler Singh's case* (supra), nor in the verdict rendered by the Full Bench of this Court in *Dalip Singh's case* (supra), the Hon'ble Benches became faced with the situation relating to the entitlement of a re-convict to claim the benefit of Section 389 of the Cr.P.C. However, the learned Single Bench of this Court, while drawing an order on 27.05.2015, upon CRM-9546-2015 in CRA-S-4427-SB-2014, titled as "*Jasdev Singh @ Jassa V/s State of Punjab*", proceeded to assign the espoused concession envisaged in Section 389 of the Cr.P.C. vis-a-vis even a re-convict.

11. Consequently, the learned Single Bench of this Court, while dealing with a similar situation, as became faced by the learned Single Bench of this Court in *Jasdev Singh's case* (supra), proceeded to dis-concur with the said order, besides proceeded to ask for a reference being made, under orders of Hon'ble the Chief Justice, to a larger Bench vis-a-vis the correctness of the decision recorded by the learned Single Bench of this Court in *Jasdev Singh's case* (supra).

12. Even for making an answer to the above conundrum, a ready reference to principles set forth in paragraph(s) (supra) of the verdict rendered by the Full Bench of this Court in *Dalip Singh's case* (supra) is of utmost importance.

13. The prolonged incarceration of the convict, post his conviction, especially when the relevant appeal is unlikely to be heard within the shortest possible time, becomes stated therein, to be the relevant governing principle for granting the craved for indulgence to the convict/appellant. Nonetheless, while granting the craved for indulgence to the convict/appellant, the

propensity and potentiality of a convict thus re-indulging in criminal activities, while on bail, thus also requires becoming borne in mind. Moreover, whether the said concession has been abused become also stated therein to be the relevant principle. Consequently, if a repeat offence is committed by the convict, post the concession appositely set forth in the application filed by him under Section 389 of the Cr.P.C., thus being endowed vis-a-vis the convict, thereby may be the repeated offence but leading to a verdict of conviction becoming made upon the convict, thus may be a deterrent against the applicant/re-convict becoming favourably endowed the craved for indulgence, as set forth in his application cast under Section 389 of the Cr.P.C.

14. Be that as it may, the verdict rendered by the Hon'ble Apex Court in "*Ash Mohammad V/s Shiv Raj Singh @ Lalla Babu and another*", to which becomes assigned Criminal Appeal No.1456 of 2012 (arising out of S.L.P. (Criminal) No.4083 of 2012), well covers the situation, where despite repeated indulgences into criminal activities by the offender(s) concerned, yet the Apex Court, in the verdict (supra), on imposition of onerous conditions upon the offender(s) concerned, accorded the indulgence of bail to the offender concerned. Since, the release of an offender under Section 439 of the Cr.P.C., thus is almost synonymous to the craved for indulgence set forth in an application under Section 389 of the Cr.P.C., therebys the principle set forth in the verdict (supra), wherebys even to a repeat offender rather indulgence of bail becomes granted, but on imposition of onerous conditions, rather necessarily requires application being made even to an application cast under Section 389 of the Cr.P.C., and, filed during pendency of a convict's appeal before this Court. In sequel, even vis-a-vis a repeat offender, irrespective of

the fact that, the said repeated commission of offence(s) by a convict rather is not set forth in the verdict recorded by the Full Bench in *Dalip Singh's* case (supra), to be the relevant parameter for granting the craved for indulgence to the convict, on the apposite application, yet the benefit of Section 389 of the Cr.P.C. can become favourably endowed to the repeat convict, but on imposition of onerous and exacting conditions upon him/her.

15. Moreover, since an accused/re-convict becomes enlarged on bail under Section 439 of the Cr.P.C., despite his repeated indulgences in criminal activities, but on imposition of onerous and exacting conditions upon him, whereby he is required to be meeting strict compliance thereto. Resultantly, if no compliance thereto is made or the said onerous conditions are breached, thereupon, when the prosecution has leverage to ask for the rescinding or cancelling the indulgence of bail granted to him. Consequently, when a re-convict is assigned the benefit, as envisaged in Section 389 of the Cr.P.C., thus on imposition of onerous and exacting conditions upon him, thereupon, when he breaches the said imposed conditions, whereupon, the public prosecutor can also seek for cancellation of the concession granted by this Court, in the exercise of powers invested under Section 389 of the Cr.P.C. In sequel, thereby adequate safeguard is created against abuse of the concession granted, or, to be granted to a re-convict, whose appeal is pending before this Court. As such, the natural corollary thereof, is that, qua thereby rather than the repeat convict(s)' application filed under Section 389 of the Cr.P.C. rather becoming straightaway rejected on the above score, contrarily on imposition of rigorous and onerous conditions upon him, he may become accorded the indulgence, as set forth in his application cast under Section 389 of the Cr.P.C.

16. Moreover, on analogical application of the principle set forth by the Apex Court in the judgment (supra), thus to a re-convict also, whereby a re-convict also becomes invested with a right of speedy conclusion, thus being made by this Court, hence of the apposite appeal reared by him. Moreover, when the said invested right is within the four corners of Article 21 of the Constitution of India. Consequently, the said principle may be considered to be applied even to a re-convict, who craves the indulgence qua the execution of the substantive sentence of imprisonment becoming suspended during pendency of the appeal before this Court, especially when there is no likelihood of the appeal becoming expeditiously heard.

17. However, to the considered mind of this Court, the judgments (supra) though do understate the necessity of prompt hearings of appeals by this Court hence being a dire necessity, as thereby the principle enshrined in Article 21 of the Constitution of India, relating to expeditious decisions being made on subjudice appeals, but becomes fully satiated. If so, the said underlinings, as made respectively by the Division Bench, and, by the Full Bench of this Court but may become relaxed, or, may become not amenable to become rigorously applied to the convicts/appellants, who file application(s) under Section 389 of the Cr.P.C., thus on the premise that, there is rather every likelihood of either expeditious hearings being made, or, expeditious decisions being made on the relevant appeals.

18. The core of the matter also relates to the process of decision making to become embarked upon an application filed under Section 389 of the Cr.P.C., thus irrespective of there being an objective consideration of the data relating to there being likelihood or unlikelihood of expeditious decision

makings being made upon subjudice appeals before this Court. Consequently, unless there is a grave constraint against rendition of expeditious decisions on subjudice appeals, and, the said constraint becoming well planked upon the relevant statistics' and data, thereupon alone to the considered mind of this Court, the prolonged custody of the convicts, who rear appeals against verdicts of conviction, may thus, as declared in verdict (supra), become the governing factor for granting the craved for indulgence, as set forth in the relevant application(s) cast under Section 389 of the Cr.P.C. Moreover, in case, after contemplated consideration becoming employed to the statistics' and data relating to the heavy docket of subjudice appeals before this Court, whereby a reasoned order planked upon the supra may become passed to the extent that, as such when there is an unlikelihood of the subjudice appeals becoming expeditiously heard, thereupon, on supra principle set forth by the Full Bench of this Court, the Hon'ble Judges may consider to proceed to favourably endow the espoused concession, as set forth in the apposite applications cast under Section 389 of the Cr.P.C.

19. Be that as it may, the relevant factor for thus making a well contemplated decision upon an application cast under Section 389 of the Cr.P.C., becomes set forth in a judgement rendered by the Apex Court in *“State (NCT of Delhi) Narcotics Control Bureau V/s Lokesh Chadha”, (2021) 5 Supreme Court Cases 724*, wherein, in the hereinafter extracted paragraphs 8 to 11, the Apex Court while being seized of the hereinafter extracted affirmative order passed by the Delhi High Court, on an application filed by the convict under Section 389 of the Cr.P.C., whereby, the Delhi High Court has, given the period of incarceration undergone by the convict,

proceeded to endow the craved for indulgence vis-a-vis the convict, rather became led to discountenance the said decision. The Apex Court has stated therein that, the discretion to be exercised by the High Court concerned, on an application filed under Section 389 of the Cr.P.C., requires that the Court is required to be drawing a satisfaction that, there are reasonable grounds for believing that he is not guilty of such offence and is not likely to commit any offence while on bail. The said has been stated to be the imperative governing factor for making an objective decision, upon, the apposite application, rather than consideration becoming meted to the factor relating to the convict suffering incarceration for a prolonged duration of time, besides to the fact that there is any unlikelihood of the apposite criminal appeal being promptly heard, and, therebys there being travesty to the principle of expeditious trial, as enshrined in Article 21 of the Constitution of India. If so, the principle set forth in *Dalip Singh's case* (supra) do therebys become dis-concurred with by the Apex Court in the verdict (supra). Therefore, while dealing with applications filed under Section 389 of the Cr.P.C., the Hon'ble Judges may consider balancing the decisions passed by the Apex Court with the decision passed by Full Bench of this Court.

*“8. On the other hand, Ms Nidhi, learned counsel appearing through the Supreme Court Legal Services Committee to represent the respondent, has adverted to the judgment of the Trial Judge and submitted that prima facie the involvement of the respondent would not stand established. That apart, it has been submitted that the respondent has undergone about four years and four months of imprisonment and the High Court having exercised its discretion to grant bail, a case for interference has not been made out.*

*9. While considering the rival submissions, we must at the outset advert to the manner in which the learned Single Judge of the High*

*Court has dealt with the application for suspension of sentence under Section 389(1) of CrPC. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25A of the NDPS Act. The findings of the learned Special Judge which have been arrived at after a trial on the basis of evidence which has been adduced indicate that the respondent who was a proprietor of a courier agency was complicit with a foreign national in the booking of two parcels which were found to contain 325 grams of heroin and 390 grams of pseudoephedrine. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail". Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) of CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the Trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) of CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act.*

*10. At this stage, we will refer to the decision of a two-Judge Bench of this Court in Preet Pal Singh v State of Uttar Pradesh<sup>3</sup> where Justice Indira Banerjee, speaking for the Court, observed as follows:*

*"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in*

*case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”*

*11. The principles which must guide the grant of bail in a case under the NDPS Act have been reiterated in several decisions of this Court and we may refer to the decision in State of Kerala v Rajesh. The High Court unfortunately, in the present case, has not applied its mind to the governing provisions of the NDPS 3 (2020) 8 SCC 645 4 (2020) 12 SCC 1226 Act. On the basis of the material which emerged before the learned Special Judge and which forms the basis of the order of conviction, we are of the view that no case for suspension of sentence under Section 389(1) of CrPC was established. The order granting suspension of sentence under Section 389(1) of CrPC is unsustainable and would accordingly have to be set aside.”*

**RELEVANT PORTION OF DELHI HIGH COURT'S AFFIRMATIVE ORDER**

*“4. Looking into the facts and circumstances of the case and the period undergone by the appellant and the fact that the appeal is not likely to be taken for hearing in near future on account of disruption caused by COVID-19 pandemic, the application is allowed and the sentence of the appellant is suspended during the pendency of the appeal on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty Magistrate, subject to the following further conditions:*

*(i) The appellant will not leave NCT of Delhi without prior permission of the Court.*



(ii) *The appellant shall appear before the Court as and when the appeal is taken up for final hearing.*

(iii) *In case of change of address, the appellant shall promptly inform the same to the concerned IO as well as to the Court.”*

19. In summa, expeditious hearings upon the apposite criminal appeals is of utmost importance, than *ipso facto* reliances being made upon verdicts (supra) rendered by the Division Bench, and, by the Full Bench of this Court, as therebys the constitutional guarantee endowed upon the convict, vis-a-vis, expeditious decisions becoming made upon his appeal, rather would become fully enlivened.

20. The reference is answered accordingly.

21. List before the Roster Bench concerned.

22. This Court records its profound appreciation to the insightful assistance purveyed by all the learned counsels concerned.

23. Moreover, this verdict be placed before the Hon'ble the Chief Justice.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(SUDEEPTI SHARMA)**  
**JUDGE**

**24.09.2024**  
**devinder**

*Whether speaking/reasoned ? Yes/No*  
*Whether reportable ? Yes/No*