

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1547 OF 2026
IN
CRIMINAL APPEAL NO. 108 OF 2026**

Bablu Punwasi Gupta

...Applicant-
Appellant

Versus

The State Of Maharashtra

...Respondent

Mr. Dilip Mishra, a/w Ayaz Khan, Zehra Charania and Mallika
Sharma, for the Applicant - Appellant.

Mr. D. J. Haldankar, APP for the State – Respondent.

H. C. Mr. Suresh Chavan, ANC, Azad Maidan Unit, present.

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CORAM: N. J. JAMADAR, J.

DATED: 3rd SEPTEMBER, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. This is an application for suspension of sentence and to enlarge the Applicant on bail during the pendency of the appeal.
3. By a judgment and order dated 23rd December, 2022, the learned Judge, Special Court (NDPS), Greater Bombay, was persuaded to convict the Applicant for an offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act, 1985") and sentence him to suffer rigorous imprisonment for 10 years and pay a fine of Rs. 1,00,000/-, with default stipulation.

4. In NDPS Special Case No. 725/2022, the gravamen of indictment against the Applicant was that, pursuant to an information, at about 23:40 hours on 31st December, 2021, the Applicant was accosted moving under suspicious circumstances. The Applicant was carrying a blue bag with yellow stripes. After complying with the mandate contained in Section 50 of the NDPS Act, 1985, a personal search of the Applicant was conducted in the presence of panch witnesses. In the bag which the Applicant was carrying, 136 bottles of Chlorpheniramine Maleate and Codeine Phosphate Syrup (100 ml each, branded as MORCERX, containing 10 ml of Codeine Phosphate per 100 ml liquid) were recovered. The samples were collected. The contraband substance was seized. Eventually, the Applicant was sent for trial.

5. In the trial, after appraisal of the evidence and material on record, the learned Special Judge returned the finding of guilt qua an offence punishable under Section 21(c) and acquitted the Applicant of the offence punishable under Section 29 of the NDPS Act, 1985. Sentence was imposed on the Applicant, as indicated above.

6. Mr. Mishra, the learned Counsel for the Applicant, submitted that the Applicant has a strong case on merits. The

bulk of the contraband was not produced before the Special Court, nor there was any material to show that permission of the Magistrate was obtained to destroy the bulk. The search and seizure is vitiated as the evidence of the panch witness contradicts the testimony of the members of the raiding party. Moreover, since the panch witness is a habitual witness, his testimony does not command implicit reliance.

7. Mr. Mishra further submitted that, in any event, the Applicant has been in custody for four years and eight months. The Applicant has undergone almost half of the substantive sentence. Thus, the Applicant deserves to be enlarged on bail during the pendency of the appeal, lest the right of appeal would be rendered illusory if the entire sentence runs out and the appeal is not finally heard.

8. Mr. Haldankar, the learned APP for the State, strongly opposed the prayer for suspension of sentence and to enlarge the Applicant on bail. It was submitted that the Applicant was found in possession of a commercial quantity of the contraband substance. There was full compliance of the mandate contained in Section 52A of the NDPS Act, 1985. The learned Special Judge has correctly appreciated the evidence and returned the finding of guilt. Therefore, at this stage, the endeavor of the

Applicant to pick loopholes in the prosecution case cannot be countenanced.

9. The learned APP is justified in canvassing a submission that a meticulous evaluation of evidence is impermissible at this stage. The Appellate Court cannot embark upon an exercise of evaluating the evidence and material to pick lacunae, shortcomings, and loopholes in the prosecution case. The Appellate Court has to see whether the appellant has a fair chance of success in the appeal.

10. The submissions canvassed by Mr. Mishra touch upon the merits of the matter. The question whether the learned Special Judge has correctly evaluated the evidence of the panch witness, is a matter which can be legitimately considered at the stage of final hearing of the appeal. It is not a case that there is infraction of mandatory statutory requirement which renders the conviction of the Applicant suspect.

11. The submissions of Mr. Mishra premised on the long period of incarceration, however, deserves consideration. The Applicant has been in custody since the date of his arrest i.e. 1st January, 2022. Out of the 10 years sentence, the Applicant has already undergone four years and eight months. Having regard to the large pendency of the cases before this Court, it is

extremely unlikely that this appeal can be taken up for hearing and final disposal in the immediate future.

12. This long period of incarceration is also required to be appreciated in light of the situation in life of the applicant noted by the learned Special Judge while determining the quantum of sentence. The learned Special Judge has noted that there were mitigating circumstances. The Applicant appeared to be a first offender. He was 29 years of age. The applicant had no criminal antecedents. The entire family of the applicant was dependent on him.

13. If the aforesaid personal attributes of the Applicant are considered in conjunction with almost half of the sentence already undergone by the applicant, in the view of this Court, notwithstanding the interdict contained in Section 37 of the NDPS Act, 1985, the exercise of discretion in favour of the Applicant may be justifiable.

14. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Narcotic Control Bureau vs. Lakhwinder Singh*¹, wherein the Supreme Court enunciated two principles. First, it is not peremptory that the accused must have undergone half of the substantive sentence

¹ 2025 SCC Online Sc 366.

before he can be released on bail pending an appeal. Second, notwithstanding the bar contained in Section 37 of the NDPS Act, 1985, if the accused has undergone a substantial part of the substantive sentence, the Appellate Court can exercise its discretion to release the accused on bail. The observations of the Supreme Court in paragraphs 5, 6 and 7 are instructive and hence extracted below:

“5. Therefore, in our view, if a case is made out for the grant of suspension of sentence and/or bail in deserving cases on merits, the Court is not powerless to grant relief of suspension of sentence and bail pending an appeal, even if an accused has not undergone half of the sentence. There cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

6. In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.

7. At this stage, the learned ASG appearing for the petitioner submitted that the power of the Court was constrained by Section 37 of the NDPS Act, which is applicable even at the stage of an appeal. He relies upon a decision of this Court in the case of *Dadu vs. State of Maharashtra (2000) 8 SCC 437*. There is no dispute about the fact that the Appellate Court is bound by constraints of Section 37 of the NDPS Act while considering the prayer for the grant of bail during the pendency of an appeal. However, if, in the facts of the case, an accused has undergone a substantial part of the substantive sentence and, considering the pendency of criminal appeals, his appeal is not likely to be heard before the accused undergoes the entire sentence, the Appellate Court can exercise the power of releasing the accused on bail pending the appeal. If the relief of bail is denied in such a factual situation only on the grounds of Section 37 of the NDPS Act, it will amount to the violation of the rights of the accused under Article 21 of the Constitution of India.”

15. Applying the aforesaid principles to the facts of the case at hand, in the considered view of this Court, the substantive sentence deserves to be suspended, and the Applicant enlarged on bail. The Applicant has already undergone almost half of the substantive sentence, and the Applicant is relatively young, and a first-time offender without any criminal antecedents. The Court may thus have an assurance that the Applicant may not indulge in similar offences, if enlarged on bail.

16. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The substantive sentence imposed by the learned Special Judge in NDPS Special Case No. 725/2022 arising out of CR No.2/2022 registered with Anti Narcotic Cell, Azad Maidan Unit, Mumbai, stands suspended till the final disposal of the appeal.
- (iii) The applicant, Bablu Punwasi Gupta, be enlarged on bail on furnishing a PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the learned Special Judge.

- (iv) The applicant shall mark his presence at the Anti Narcotic Cell, Azad Maidan Unit, on the first Monday of October and April of every year, till the disposal of the appeal.
- (v) The applicant shall furnish his residential address and cell phone number to the Investigating Officer and keep him updated in case of any change therein.
- (vi) The applicant shall not leave country without prior permission of this Court.
- (vii) The applicant shall attend the proceedings in this appeal, as and when directed.

[N. J. JAMADAR, J.]