

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.87 OF 2015**

**IN**

**CRIMINAL APPEAL NO.87 OF 2015**

**MR.HANIF HAJI ISMAIL SUMANIYA )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.A.P.Mundargi, Senior Advocate, a/w. Mr.Prashant Badole,  
Advocate for the Applicant.

Mr.Deepak Thakre, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 17<sup>th</sup> FEBRUARY, 2015.**

**P.C. :**

1 Heard Mr.A.P.Mundargi, the learned senior advocate  
for the applicant. Heard Mr.Deepak Thakre, the learned APP for  
the State.

2           The applicant has been convicted by the Additional Sessions Judge, Greater Bombay, for the following offences and sentenced as follows :

- i) With respect to the offence punishable under Section 25(1B) (a) of the Arms Act read with Section 3 thereof – Rigorous Imprisonment for 1 year and to pay fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for 2 months.
- ii) With respect to the offence punishable under Section 25(1A) of the Arms Act read with Section 7 thereof – Rigorous Imprisonment for 7 years and to pay fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for 3 months.
- iii) With respect to the offence punishable under Section 26(2) of the Arms Act – Rigorous Imprisonment for 5 years and to pay fine of Rs.5,000/-, in default, to suffer Rigorous Imprisonment for 2 months.

The learned Additional Sessions Judge directed that all the substantive sentences would run concurrently.

3           The appeal filed by the applicant challenging his conviction and the sentence imposed upon him, has already been admitted. He is, therefore, by the present application seeking that during the pendency of the appeal, he be released on bail.

4           The application has been made primarily on medical ground. It is submitted that the applicant is not keeping good health. It was, initially, submitted that, the applicant was suffering from AIDS, and in that connection, a report was called for from the J.J.Group of Hospitals, where the applicant was allegedly treated. It has been revealed from the said report that the applicant was tested for HIV and was found positive. However, his ailment has not advanced up to the stage of AIDS.

5           A further report from the Superintendent, J.J.Group of Hospitals, was called for, for ascertaining the general health condition of the applicant. Such report has been received and I have considered the same.

6           Undoubtedly, the applicant appears to be tested positively for HIV. However, his health does not seem to be that bad, so as to justify his release on bail, only on that ground. Since it was submitted by the learned senior advocate for the applicant that the applicant has also a good case for suspension of sentence on merits, I have considered the matter from this angle also.

7           Mr.Mundargi submitted that there were eleven other accused in the said case, who, though were tried along with the applicant, were acquitted.

8           I find that the case of the investigating agency against the applicant was that, on secret information, a trap was laid and the applicant was apprehended while in possession of a revolver. The prosecution case was that, when he was questioned, he disclosed certain information which led to the recovery of a number of arms and ammunitions from a room, which was said to be in the possession of the applicant's brother.

9           There is substance in the contention advanced by the learned senior advocate for the applicant that except acquisition and possession of arms, there was no other allegation against the applicant. In other words, that the arms were possessed or acquired for a specific unlawful design, or that the applicant was a member of any organized crime syndicate, was not the allegation that was leveled against him.

10           It also appears that the possession and acquisition of all the arms was not attributed to the applicant alone, as per the prosecution case, but the eleven others, who were also responsible according to the prosecution for the alleged offence, have been acquitted.

11           The applicant was apprehended on 13<sup>th</sup> October, 1999. He remained in custody for a period of one year and two months till he was released on bail on 13<sup>th</sup> December, 2000. The applicant, thereafter, was on bail for a period of 15 years i.e. till

14<sup>th</sup> January, 2015, when he was convicted. There is substance in the contention advanced by the learned senior advocate for the applicant, that the applicant had enjoyed liberty for a period of 15 years during the trial and is not alleged to have misused the liberty, in any way.

12            In the normal course, the appeal is not likely to be taken up for hearing within a short time.

13            Considering all the relevant aspects of the matter, including the fact that the applicant has been in custody for a period of more than year, the fact that he was on bail for a period of 15 years, during which period, he is not said to have abused his liberty, the fact that he is tested positive for HIV and does not have good health, and finally, the fact that the appeal is not likely to be taken up for final hearing within a short time, I think it fit to allow the application, subject to certain condition.

14            The application is allowed.

15            Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicant shall stand suspended and the applicant shall be released on bail in the sum of Rs.50,000/- with 1 surety in like amount, on the condition that the applicant shall report to the trial court on every Monday, till the disposal of the appeal.

              Should the trial court be closed on any given Monday, on account of a holiday, the applicant shall report to the trial court on the next working day.

              In case of any default by the applicant in reporting to the trial court, as stipulated above, the trial court shall take further appropriate action in the matter by treating this order, as if passed by it.

16            The application is disposed of accordingly.

**(ABHAY M. THIPSAY, J.)**