

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.599 OF 2014

IN

CRIMINAL APPEAL NO.810 OF 2013

**MANGALSINGH @ MANGESH CHATURSINGH)
ONAVALE)...APPLICANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Anil G. Lalla a/w. Ms.Beerta Bajwa, Ms.Reshma Mahadik and
Ms.Monika Malkani, Advocate for the Applicant / Appellant.

Shri Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 18th DECEMBER 2015.

P.C. :

1 The applicant / appellant and two others were
convicted of offences punishable under Section 20(C) read with
Section 8(c) and Section 29 read with Section 8(c) of the
Narcotics Drugs and Psychotropic Substances Act (NDPS Act).
The learned Judge of the Special court sentenced the applicant
/appellant and the other two, to suffer Rigorous Imprisonment for

10 years each, and to pay a fine of Rs.1,00,000/- each. Separate appeals have been filed by the applicant/appellant and other two accused, which are pending before this court.

2 The appeal, filed by the applicant/appellant challenging the conviction and the sentences imposed upon him, has already been admitted. The same is ready for final hearing. However, for want of time, the court has not been able to take it up and decide it finally. The applicant / appellant is in custody since March 2012.

3 By the present application, the applicant / appellant prays that pending the hearing and final disposal of the appeal, the substantive sentences imposed upon him be suspended, and that, he be released on bail.

4 I have heard Shri Anil Lalla, the learned counsel for the applicant. I have heard Shri Deepak Thakre, the learned APP for the State.

5 Shri Lalla has taken me through the relevant parts of the impugned judgment and the relevant evidence.

6 The prosecution case, as put forth before the trial court, was that, secret information was received by the officers of the Anti Narcotics Cell, Worli Unit, that persons by name Tanaji Mohite and Shivaji Chavan were dealing in business of *ganja* and that they used to sell *ganja* through their associates Ambadas Pawar and Sunil Mohite. The information was also that the said Sunil Mohite (original accused no.1) and Ambadas Pawar (original accused no.2) would be coming by an ash coloured Bolero jeep bearing Registration No.MH-17-V-2466 to Thane-Mumbai Road, near Priyadarshini BEST Bus stop, Service Road, Chunabhatti, at about 2.00 -2.30 p.m. for selling *ganja*. On this information, a trap was laid and when the vehicle came, it was intercepted. In this vehicle, besides the said accused nos.1 and 2, the applicant / appellant was also found. About 70 kgs. of *ganja* was found in the vehicle. The applicant / appellant was also charged and prosecuted as accused no.3.

7 Shri Lalla submitted that the case of the applicant /
appellant was different from that of the other accused. He
submitted that the information did not relate to the applicant /
appellant. He also submitted that the applicant / appellant was
merely a driver of the said Bolero jeep, and could not be said to be
in possession of *ganja*. He also submitted that the said Bolero
jeep, admittedly, did not belong to the applicant / appellant.

8 I have considered the matter.

9 I find that similar contentions were raised before the
trial court. The learned Judge of the trial court has dealt with
those contentions in paragraphs 31, 32, 33 and 34 of the
impugned judgment. The learned Judge observed, *inter alia*, that
the vehicle, though belonged to the brother-in-law of the applicant
/ appellant, was revealed to be throughout in the control of the
applicant / appellant. From the evidence, it appears that the
vehicle was in the name of the brother-in-law of the applicant /

appellant only as a matter of arrangement between these two, as the applicant / appellant was unable to procure a loan for the purchase of a vehicle, and as his brother-in-law was able to procure such a loan. There was no evidence as to where the *ganja* was loaded or where the accused nos.1 and 2 boarded the vehicle; and consequently, there was no evidence to show that the accused nos.1 and 2 had subsequently boarded the said vehicle with ganja, without the knowledge of the applicant / appellant. The residence of the applicant / appellant and that of the accused nos.1 and 2, is in the same locality.

10 Considering the quantity of the *ganja*, and that it had a peculiar smell, at this stage, it would be difficult to hold that there are reasonable grounds for believing the applicant / appellant to be not guilty of the alleged offence. While considering the application for suspension of sentence during the pendency of the appeal, the provisions of Section 37 of the Narcotics Drugs and Psychotropic Substances Act cannot be lost sight of.

11 Considering all the relevant aspects of the matter, though there *may be* a difference between the case of the applicant / appellant and that of the other two accused, on the whole, this does not appear to be a fit case where the sentence imposed upon the applicant / appellant should be suspended. Instead, the appeal should be heard expeditiously.

12 The application is rejected.

13 The hearing of the appeal is ordered to be expedited.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**