

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL APPLICATION NO.909 OF 2014
IN
CRIMINAL APPEAL NO.581 OF 2014

Imran Akbarali Mukadam	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

....

Mr.Ayaz Khan a/w. Mr.Rajendra S. Bidkar, Advocate for the Applicant.
Mrs.S.V. Gajare, A.P.P. for Respondent – State.

....

CORAM : ABHAY M. THIPSAY, J.

DATED : JANUARY 16, 2015.

P.C. :

Heard Mr.Khan, learned counsel for the applicant. Heard Mrs.Gajare, learned A.P.P. for the respondent – State of Maharashtra.

2 The appellant's appeal challenging his conviction of an offence punishable under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, (NDPS Act) read with Section 20 of the NDPS Act, has already been admitted. The appellant has been sentenced to suffer R.I. for ten years and to pay a fine of Rs.1,00,000/-, with a default sentence of one year. By this application,

the applicant prays that the substantive sentence imposed upon him be suspended pending the hearing and final disposal of the appeal, and that, he be released on bail.

3 Among other things, it is contended that the evidence of the panch witness did not support the prosecution case at all, but that, this aspect of the matter was not properly considered by the trial Court. It is submitted that the panch witness (P.W.5) did not identify the contraband shown to him in the Court during his evidence as the one that was allegedly recovered from the possession of the applicant. That, in fact, the panch categorically stated that it was not the same. It is also contended that the panch witness did not identify the applicant properly and admitted that the applicant had been shown to him by the investigating officer. It is submitted that the panch witnesses was not declared hospital. Reliance has been placed on the following two decisions:

i) Mr.Milan Sarcanski Vs. The State¹

ii) Mukhtiar Ahmed Anshari Vs. State (N.C.T. of Delhi)²

4 The applicant is in custody since 17th March, 2012. In the ordinary course, the appeal is not likely to be taken up for final hearing within a short time.

1 1997 ALL MR (Cri) 496.

2 2005 (5) SCC 258

5 Arguable points have been raised. The applicant is stated to be a resident of Mumbai.

6 In the circumstances, I am inclined to allow the application.

7 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.1,00,000/ (Rupees One Lac) with one surety in the like amount, or two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand), each, on the condition that the applicant shall report to the trial Court on every first and third Monday of each calender month, until further orders from this Court.

Any default by the applicant in reporting to the trial Court may be dealt with by the trial Court by treating as if the present order had been passed by it.

8 Hearing of the Appeal is ordered to be expedited.

(ABHAY M. THIPSAY, J.)