

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.1060 OF 2014
IN
CRIMINAL APPEAL NO.336 OF 2012**

Balwinder Santosh Singh Kala ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mrs.Anjali Patil, Advocate for the Applicant.
Mr.Deepak Thakre, APP for the Respondent/State.
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CORAM : ABHAY M. THIPSAY J.

DATED : 8TH APRIL 2015

ORAL ORDER :

1. The appeal filed by the applicant challenging his conviction as recorded by the learned Judge of the Special Court under the N.D.P.S. Act and the sentences imposed upon him, has already been admitted. By the present application, the applicant prays that pending the hearing and final disposal of the appeal, the substantive sentences imposed upon him be suspended, and he be released on bail.

2. I have heard Mrs.Anjali Patil the learned counsel for the applicant and Mr.Deepak Thakre the learned Additional Public

Prosecutor for the State. With their assistance, I have gone through the relevant evidence and the relevant parts of the impugned judgment.

3. There were totally six accused including the applicant in the Special Case vide which the applicant was prosecuted. The applicant was the accused No.4. All the other accused, however, were acquitted by the trial Court.

4. The case of the Investigating Agency, in brief, was that on 01/11/2009, Dilip Kulkarni, Inspector of Police, attached to Anti Narcotic Cell, Mumbai received secrete information that a lady by name Simran (accused No.6) – a Bar Dancer from Panvel - was going to bring *ganja* from Andhra Pradesh for selling the same in Mumbai in suburban areas. Information was also that the said lady used to hand over the sale proceeds of *ganja* to one Raju alias Ramreddy after taking her commission. Information was that on 01/11/2009 the said lady along with her associates was coming to Mumbai, with about 700 to 750 kg. *ganja* in truck No.CG-04-G-8300 and that the truck was to arrive by Pune-Mumbai road via Vashi Check Naka. There was also information about the names and description of the associates of the said lady – Simran. One of them was mentioned as Shajin (accused No.1), another as Rinku Singh (accused No.2) and another as Bijju Nadar (accused No.3). What is relevant in this context is that, there was no information

about the applicant. On receipt of this information, a trap was laid and in the presence of panchas the truck was intercepted. There were six persons in the said truck including the persons mentioned above, the applicant and one Gurumelsingh. *Ganja* weighing about 710 kg. was found concealed in a cavity created in the truck apparently for such concealment only.

5. The main contention advanced by the learned counsel for the applicant is that when the others were acquitted, there was no particular reason for the trial Court to have held the present applicant guilty. It is submitted that the applicant is in custody for a period of more than five years and since the appeal is not likely to be taken up for final hearing within a short time, the substantive sentences imposed upon the applicant be suspended.

6. I have carefully gone through the impugned judgment in the context of suspension of the sentence as prayed for.

7. I find that the case of the Investigating Agency was that the applicant was the driver, who was driving the said motor truck at the material time. The learned Judge accepted the case of the prosecution that *ganja* was found concealed in the truck. He, however, thought that the other accused could not be said to be having any knowledge about the concealment of the *ganja* in the truck. The learned Judge was of the view that since the applicant

was the driver of the said truck, the knowledge of what was concealed in the truck, could safely be attributed to him.

8. In this regard, what needs to be observed is that the accused No.5-Gurumelsingh appears to be the owner of the said truck, as per the prosecution case itself. In the evidence of the Investigating Officer, he has been described as the 'owner of truck' and though it is not very clear, as what steps were taken to ascertain his ownership over the truck, it appears to be the case of the Investigating Agency that he was the owner of the said truck.

9. The prosecution case also was that pursuant to the information disclosed by the accused No.2 Rinku Singh, *ganja* weighing about 530 Kg. was seized in the course of investigation. However, as aforesaid, even the accused No.2 has been acquitted.

10. The Investigating Officer indicated that the *ganja* had been loaded and was being brought from Andhra Pradesh. The case was that the accused No.6-Simran was also traveling from Hyderabad. As aforesaid, in the secret information, her name was mentioned. In spite of these adverse factors against her, she has also been acquitted.

11. It is evident that the applicant came to be convicted only on the basis that he was fully aware about the *ganja* in his truck. Others were held to be not aware of the same.

12. Prima facie, when the owner of the truck was travelling in the truck, the possession of the articles concealed in the truck, cannot be attributed, at least exclusively, to the driver of the truck.

13. No appeal from the acquittal of the other accused has been filed.

14. A number of arguable points needing serious consideration, have been raised.

15. Considering this, and the fact that the applicant is in custody for a period of more than five years and that in the normal course there is no possibility of appeal being finally heard within a short time, I think it fit to suspend the substantive sentences imposed upon the applicant.

16. The application is allowed.

17. Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicant/appellant shall stand suspended and the applicant/appellant shall be released on bail in the sum of Rs.1,00,000/- with one surety in the like amount, on the condition that, the applicant/appellant shall report to the trial court on first Monday of each calendar month till the disposal of the appeal.

18. 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.
19. Any default by the applicant in reporting to the trial court, as aforesaid, shall forthwith be reported by the trial court to this court for further appropriate action.
20. The application is allowed in the aforesaid terms.

(ABHAY M. THIPSAY J.)