

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.985 of 2015

IN

CRIMINAL APPEAL NO.208 of 2014

MISS MWANGILWA PAMELA .. APPLICANT

Versus

UNION OF INDIA & ANR .. RESPONDENT

Mr.Ayaz Khan, Advocate for the applicant/appellant.

Mr.Francis Saldanha, Spl.Pp for DRI/Union of India.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 20th OCTOBER 2015

P.C. :

1 The applicant/appellant was prosecuted on the allegation of having committed offences punishable under the Narcotic Drugs and Psychotropic Substances Act. The Special Judge who tried him, convicted and sentenced him as per the details given below :

OFFENCE	SENTENCE
Section 29 r/w 8(c), 21(c), 23 and 28 of the NDPS Act.	Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to suffer Simple Imprisonment for 3 months

Section 21(c) of the NDPS Act.	Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to suffer Simple Imprisonment for 3 months.
Section 23(c) and 28 of the NDPS Act.	Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to suffer Simple Imprisonment for 3 months

The learned Special Judge directed that the substantive sentences would run concurrently. The Appeal filed by the applicant/appellant challenging her conviction and the sentences imposed upon her is pending. The appellant has actually remained in custody for a period of about 9 years.

2 Mr.Ayaz Khan, the learned counsel for the applicant/appellant submitted that the conviction of the applicant/appellant is not in accordance with law. He submitted that the applicant/appellant has a good case on merits.

3 Among other things, Mr.Khan contended that the baggage identification tags which were supposed to be on the luggage of the applicant/appellant, were not satisfactorily proved during the trial. He also pointed out that the case of the prosecution was that there was a security strap around the bag of the applicant/appellant, but such a security strap was not produced before the Court during the trial.

4 Mr.Khan also pointed out that the evidence of the panch witness Hariprasad Sanjeev Hegde (PW10) which was

crucial, was not recorded in accordance with law. He drew my attention to the fact that under the guise of permitting the witness to refresh his memory, the Special Public Prosecutor in-charge of the trial, was permitted to put leading questions to the panch witness. He submitted that the evidence obtained from the panch witness in this manner, would not have much value.

5 Mr.Khan also submitted that, according to the case of the prosecution, two samples of the contraband that were obtained were of 5 grams each. He, however, pointed out some material from the record that the sample that was received in the laboratory for analysis was weighing 1.64 grams. According to him, this discrepancy in the weight indicated that the possibility of the sample having been tampered with, could not have been ruled out.

6 Mr.Khan also pointed out that as per the case of the prosecution, there was supposed to be one set of keys that came to be recovered from the applicant/appellant. He however, submitted that totally three sets of keys, marked as Articles 3, 5, and 8 were produced during the trial, and that there was no satisfactory explanation as to from where these three different sets came.

7 Mr.Khan also pointed out that there was no proper compliance with the provisions of section 50 of the NDPS Act.

8 Mr.Saldanha, the learned counsel for the respondent no.1 submitted that since the recovery of the contraband was from

the checked-in baggage of the applicant/appellant, the failure to comply with the provisions of section 50 of the NDPS Act, if any, would be of no consequence. He also submitted that the difference in the weight of the sample would be due to the fact that initially the samples were weighed along with the polythene bags in which they were taken, but in the laboratory, the weight thereof is given after excluding the weight of the bags. He also submitted that though the baggage identification tags were not held as proved by the learned Special Judge, they had indeed, and in fact, been produced before the Court. He submitted that the security strap might not have been produced, as it might have been thought as not of importance.

9 I have considered the matter.

10 It is a fact that the applicant is in custody for about 9 years. In the ordinary course, the Appeal is not likely to be taken up for hearing immediately or within a short time.

11 In my opinion, arguable points needing consideration have been raised. Under the circumstances, I am inclined to allow the application.

12 Application is allowed.

13 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 like amount, or two sureties in the sum of Rs.50,000/- each, on the condition that she shall report to the trial Court on the first Monday of every calendar month till the disposal of the Appeal.

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

12 Any failure on the part of the applicant to report to the trial Court, as aforesaid, shall forthwith be brought to the notice of this Court by the trial Court for further appropriate action.

13 Application is disposed of accordingly.

(ABHAY M. THIPSAY, J)

CERTIFICATE

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