

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1163 OF 2014
IN
CRIMINAL APPEAL NO.687 OF 2014

Ratanlal Ramvilas Gupta
Versus
The State of Maharashtra

....Applicant.
...Respondent.

Ms. Sartaj Shaikh, advocate for the applicant.
Ms. S.S.Kaushik, APP for the respondent-State.

CORAM : ABHAY M. THIPSAY, J.

DATED : January 29, 2015

P.C.:

Heard.

2 The applicant's appeal challenging his conviction of offences punishable under Section 20 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (In short '**NDPS Act**') and the sentence imposed upon him by the Special Judge under the NDPS Act has already been admitted. By the present application, the applicant/appellant prays that the substantive sentence imposed on him

be suspended pending the hearing and final disposal of the appeal and he be released on bail.

3 Applicant is in custody since 16.3.2012. During the trial, he was not released on bail.

4 The main contention advanced by Ms. Sartaj Shaikh, the learned counsel for the applicant/appellant is with respect to the non-compliance of the provisions of Section 42 and Section 50 of the NDPS Act. According to her, evidence adduced during the trial, as also the observations made by the learned trial Judge himself, would indicate that there has been non-compliance with the provisions of Section 42 and Section 50 of the NDPS Act. She submitted that it has been held by the Apex Court in a number of authoritative pronouncements that failure to comply with the relevant provisions would be fatal to the prosecution case.

5 I have been taken through relevant evidence and the relevant part of the judgment delivered by the learned trial Judge.

6 With regard to the question of compliance of Section 50 of the NDPS Act, which was raised before the trial Court, discussion is found in

paragraphs 39 to 46 of the impugned judgment. I have also gone through the evidence that has been referred to by the learned trial Judge. In these paragraphs, learned trial Judge himself observed that the accused was not informed of his right in correct words. In paragraph 46 of the impugned judgment, the learned Judge himself observed that the evidence of the prosecution witnesses did not show that they '*used specific word on this aspect*'. The learned Judge observed that 'it could be *inferred* from their evidence that the provisions of Section 50 of the NDPS Act had been complied with.'

7 In my opinion, arguable points needing serious consideration have been raised. In the ordinary course, the appeal is not likely to be taken up for final hearing within a short time. The learned counsel for the applicant/appellant states that except the present case, applicant/appellant has not been involved, so far, in any other criminal case.

8 Considering all the relevant aspects of the matter, I am inclined to allow the application.

9 Pending the hearing and final disposal of the appeal, the substantive sentence imposed of the applicant/appellant shall stand suspended, and the applicant/appellant shall be released on bail in the

sum of Rs.1,00,000/-(Rupees One Lakh) with one surety in the like amount, on the following condition:

Applicant/appellant shall report to trial Court on every Monday till disposal of this appeal. Should the trial Court be closed on a given Monday, the applicant shall attend the Court on the next working day.

10 Any failure on the part of the applicant/appellant to report to the trial Court as aforesaid shall forthwith be reported by the trial Court to this Court for further action.

11 Application stands disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)