

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.1610 OF 2013
IN
CRIMINAL APPEAL NO.277 OF 2010**

Jayabalan Freddie Ratnaswamy ... **Applicant**
V/s.
Union of India & Anr. ... **Respondents**

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Mr.Anil G.Lalla with Mrs.Beerta Bajwa, Advocate for the Applicant.
Mrs.Uma Palsuledesai, Advocate for the Respondent No.1.
Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 18TH MARCH 2015

ORAL ORDER :

1. Heard Mr.Lalla, the learned counsel for the applicant/appellant. Heard Mrs.Palsuledesai, the learned counsel for the respondent No.1.

2. The appeal filed by the applicant, challenging his conviction as recorded by the learned Judge of the Special Court under the Narcotic Drugs and Psychotropic Substances Act (N.D.P.S.Act) and the sentence imposed upon him, has already been admitted.

3. The applicant had applied for suspension of sentence imposed upon him during the pendency of the appeal, but that application came to be rejected by an order dated 24/01/2011 (Criminal Application No.568 of 2010). The applicant's second application for the same relief also came to be rejected on 27/09/2011 (Criminal Application No.945 of 2011) primarily on the ground that the previous application was rejected after going into the merits of the matter and that no new case had been made out. The third application was disposed of (Criminal Application No.134 of 2013), as withdrawn, as the Court decided to hear the appeal expeditiously and gave a direction, for fixing the appeal for final hearing, in third week of April 2013.

4. Now the present application has been made on the ground that in spite of said direction, the appeal has not been taken up for final hearing. It is submitted that the applicant has already undergone a period of **more than nine years and two months** in custody and that the appeal is still not likely to be taken up for final hearing forthwith. It is submitted that on this ground, the substantive sentence imposed upon the applicant be suspended during the pendency of the appeal and the applicant be released on bail

5. The learned counsel for the Union of India submitted that the period undergone by the applicant in custody during the

pendency of the appeal cannot, by itself, be a ground for releasing the applicant on bail. According to her, the applicant has to satisfy the test laid down in Section 37 of the N.D.P.S.Act. She submitted that since the merits of the matter were earlier extensively considered by this Court, while rejecting the first application filed by the applicant, there was no scope for reconsideration of the matter.

6. Since the learned counsel for the applicant submitted that there was a good case for the release of the applicant on bail on merits also, I have examined the matter from this point of view. In this context, I have also carefully gone through the order dated 24/01/2011, whereby the applicant's first application came to be rejected.

7. Admittedly, the seizure of the contraband, which is said to be heroin weighing about 3.5 kg. was not effected from the present applicant. The same was allegedly found in possession of the co-accused-Aroumougam. It is, on the basis of the information, disclosed by the said Aroumougam that the applicant was found, but admittedly, no incriminating article or contraband was found with the applicant.

8. The case against the applicant is based only on the statement of the Aroumougam and the applicant's own statement,

recorded under the provisions of Section 67 of the N.D.PS.Act. The statement of Aroumougam does incriminate the applicant; and applicant's own statement also incriminates him.

9. It is not in dispute that Aroumougam as well as the applicant had retracted the statements.

10. Since the learned counsel for the respondent No.1 contended that in spite of length of time spent in prison by the applicant, he must necessarily make out a case on merits for release on bail, I have gone through the relevant evidence i.e. the evidence of Sanjakumar Sinha (PW4), who recorded the statement of co-accused Aroumougam under Section 67 of the N.D.PS.Act and the statement of Sanjay Bhat (PW5), who recorded the applicant's statement under the same provisions. My attention is particularly drawn by the learned counsel for the applicant to the notes of evidence of Sanjay Bhat, recorded during the trial.

11. The statement of the said Aroumougam and the applicant were recorded after they were brought by the Narcotic Control Bureau (NCB) officers from the Airport to the NCB office.

12. The learned counsel for the respondent No.1 submitted that apart from the statements themselves, the prosecution was relying on certain documents that came to be seized in the course

of investigation, and these documents would indicate that the applicant and co-accused had traveled together and stayed together. This has been referred to in the order dated 24/01/2011 also.

13. I have carefully considered the matter. It is a fact that the applicant is in custody for a period of nine years and two months. He has, thus, undergone more than 90 percent of the sentence, that has been imposed upon him. In spite of order passed by this Court to expedite the final hearing of the appeal, it has not been expedited. I find that a case for suspension of the sentence has been made out, as a number of arguable points have been raised which need serious consideration at the time of final hearing of the appeal. First of all, whether the statements of the applicant and co-accused were voluntary, would need consideration. Secondly, the admissions elicited from the P.W.No.5 during his cross-examination would need to be considered and appreciated properly in the light of the other evidence.

14. I find that when the previous application was rejected by the said order dated 24/01/2011, no reference was made to the evidence adduced during the trial.

15. In my opinion, the applicant has made out a case for suspension of the sentence imposed upon him and his release on

bail, even after taking into consideration the provisions of Section 37 of the N.D.PS.Act.

16. The application is allowed.

17. 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.50,000/-, with one surety in the like amount, on the condition that he shall report to the office of the N.C.B., Chennai on every Monday between 11.00 a.m. to 1.00 p.m., till the disposal of the appeal.

18. Any default on the part of the applicant, in reporting to the N.C.B. Office at Chennai, shall forthwith be reported by that office to the N.C.B. Office at Mumbai, for further appropriate action in the matter.

19. The application is disposed of accordingly.

(ABHAY M. THIPSAY J.)