

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.1296 OF 2015
IN
CRIMINAL APPEAL NO.803 OF 2014**

Tsering Tobges @ Jilebi Bhai ... **Applicant**
V/s.
Union of India & Anr. ... **Respondents**
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Ms.Zehra Charania h/f. Mr.Ayaz Khan, Advocate for the Applicant.
Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.
Ms.Purnima H. Kantharia, Advocate for the Respondent No.2.
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CORAM : A. M. BADAR J.

DATED : 16th NOVEMBER 2016.

P.C.

1 By this application, the applicant/convicted accused, who has preferred Criminal Appeal bearing No.803 of 2014, is praying for relaxation of conditions imposed by this Court while suspending his sentence and releasing him on bail.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the applicant is a Tibetan and it is a matter of common knowledge that Tibetan works with Tibetan themselves and nobody employs them. Learned counsel further argued that the applicant has no work at Maharashtra and, therefore, he want to go to his native place and office of the Narcotic Control Bureau,

Mandi, Sub-Zone is at a traveling distance of two hours from the house of the applicant. The learned counsel for the applicant placed reliance on affidavit of Dungar Singh @ Arjun Singh, wherein it is stated that temporary accommodation was given by him to the applicant/appellant as his son is friend of son of the applicant/appellant. It is further stated in the affidavit that the applicant is financially incapable of paying rent and that he has no job. With the affidavit, the learned counsel for the applicant submits that conditions imposed by this Court while releasing the applicant/accused be relaxed.

3 The learned Additional Public Prosecutor opposed the application and argued that the Investigating Agency has no control over the office at Mandi, Sub-Zone and attendance of applicant in that office cannot be supervised. The learned Additional Public Prosecutor further argued that upon inquiry by the Investigating Agency, it is found that the applicant is residing in the accommodation provided by Arjun Singh and he is working as a servant with the said person at Shop No.1,2 and 3 at Dhulkhadi. The learned Additional Public Prosecutor placed reliance on duly sworn affidavit of the Intelligence Officer of Narcotic Control Bureau.

4 It is seen that the applicant/accused is convicted of the offence punishable under Section 20(b) read with Section 20(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and he is sentenced to suffer Rigorous Imprisonment for fifteen years and to pay fine of Rs.2,00,000/-. Similarly, he is convicted of the offence punishable under Section 29 read with Section 20(ii)(c) of the Narcotic

Drugs and Psychotropic Substances Act, 1985 and is sentenced to suffer Rigorous Imprisonment for fifteen years and to pay fine of Rs.2,00,000/-. It is thus seen that heavy sentence of imprisonment is imposed upon the applicant/accused apart from fine of Rs.4,00,000/-. The learned counsel for the applicant/accused is unable to make a statement as to whether the fine is paid by the applicant/accused or not. Availability of applicant/accused for hearing the appeal is one of the prime consideration and that is dependent upon the quantum of sentence imposed upon him. During pendency of the trial, the applicant/accused was not on bail. His sentence was suspended by this Court by order dated 20th August 2015 by imposing conditions which includes not leaving the State of Maharashtra without permission of the Court and to attend the trial Court on first Monday of every calender month. This was obviously done in order to secure attendance of the applicant/accused for expeditious hearing of the appeal, particularly when the applicant/accused was not on bail during trial. This Court is not assured of appearance of the applicant/accused and his cooperation in disposal of the appeal if these conditions are relaxed. Hence no case for relaxation.

Hence the application is rejected.

(A. M. BADAR J.)