

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.13 OF 2012

Mrigank Pandey alias Chunnu .Applicant

Vs.

S.G.Dole & anr. .Respondents

Mr.Ayaz Khan, Advocate, for the Applicant
Ms Rebecca Gonsalves, Advocate, for the Respondent No.1
Mr.Vimal Dhaka, Investigating Officer is present

CORAM : R.G.KETKAR, J.

DATE : 20.03.2017

P.C.

. Heard Mr. Khan, learned counsel for the Applicant and Ms Gonsalves, learned counsel for the NCB.

2. Applicant had moved this Court by way of an Application under Section 439 of the Code of Criminal Procedure, 1973 (For short “Cr.P.C.” for enlarging him on bail in the NDPS Special Case No.65 of 2011 pending before the learned Special Court constituted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (For short “Act”).

3. By Order dated 07.02.2012, above Application was rejected. Aggrieved by this Order, Applicant preferred Special Leave Petition No.3000 of 2012 in the Apex Court. By Order dated 24.09.2012, pending the SLP Applicant was released on bail on his furnishing personal bond in a sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the Trial Court. By Order dated 12.08.2014, reference was decided. It was held that Act will apply to psychotropic substances mentioned in the Schedule to the Act and the decision in *State of Uttarakhand Vs. Rajesh Kumar Gupta, 2007(1) SCC 355* was wrongly decided. The matters pending before the Apex Court were remitted to the concerned High Courts for passing of appropriate orders in the light of the decision.

4. By subsequent Order dated 22.07.2016, the Apex Court clarified that the Order dated 24.09.2012 passed in Special Leave Petition No.3000 of 2012 was only during the pendency of the SLP and directed the Applicant to surrender before the High Court.

5. In pursuance of the Order passed by the Apex Court, the Applicant has surrendered before this Court. By Order dated 08.09.2016, the Applicant was taken into custody. Applicant was handed

over to the officers of NCB with direction to NCB to produce the Applicant before the Special Court for complying with the further procedure as per provisions of law.

6. By Order dated 26.09.2016, the Applicant was given leave to amend the Application to incorporate additional grounds. The matter was, thereafter, heard from time to time in this Court and ultimately in pursuance of the Order dated 03.03.2017 passed by this Court (CORAM : SMT. SADHANA S. JADHAV, J.), registry has placed the matter before me.

7. It is common ground between the parties that the Order dated 07.02.2012 passed by this Court rejecting the above Bail Application was not set aside by the Apex Court. Mr. Khan invited my attention to evidence of PW.2 Shri Rakeshkumar Satish Jhunjunwala. In particular, he has taken me through the cross-examination in respect of second seizure panchanama dated 30.12.2010.

8. As the Applicant is relying upon subsequent development namely evidence of PW.2 recorded on 08.09.2016, during the course of hearing, I suggested Mr. Khan to consider filing a fresh Application

before the Special Court for bail.

9. In due deference to the suggestions made to Mr.Khan, he submitted that on or before 28.03.2017 the Applicant will file a fresh Application for bail before the Special Court constituted under the provisions of the Act. He submitted that the learned Special Judge may be directed to dispose of the Bail Application within one week. He relied on the decision of the Apex Court in the case of ***Hussain and Anr. Vs. Union of India in Cri. Appeal No.509 of 2017 dated 09.03.2017*** and in particular, paragraph 27 thereof. In paragraph 27 (i)(a)(b) reads thus :-

“27. To sum up:

(i) The High Courts may issue directions to subordinate courts that

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years”

10. In view of the changed circumstances, Applicant is at liberty to file a fresh Application for bail before the Special Court

constituted under the provisions of the Act. The learned Judge of the Special Court is requested to dispose of the Application as early as possible and keeping in mind the direction of the Apex Court extracted herein. The learned Judge is requested to decide the Application uninfluenced by the observations made in the Order dated 07.02.2012. NCB will ensure that PW.3 proceeds with his evidence and no undue adjournments are sought. Application is disposed of. Order accordingly.

(R.G.KETKAR, J.)