

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1045 OF 2016

IN

CRIMINAL APPEAL NO.810 OF 2013

**MANGALSINGH @ MANGESH CHATURSINGH)
ONAVALE)...APPLICANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Anil Lalla i/b. Lalla & Lalla, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th JANUARY 2017.

P.C. :

1 This is second application for bail of convicted accused no.3 in N.D.P.S. Special Case No.87 of 2012. By the impugned judgment and order dated 4th July 2013 passed by the learned Special Judge for N.D.P.S. Cases, in N.D.P.S. Special Case No.87 of 2012, the applicant / accused along with two others were convicted for offence punishable under Section 8(c) read with

Section 20(c) and under Section 8(c) read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). For the offence punishable under Section 8(c) read with Section 20(c) of NDPS Act, the applicant / accused was sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.1 Lakh, in default, to undergo further simple imprisonment for 6 months. Similarly, for the offence punishable under Section 8(c) read with Section 29 of the said Act, the applicant / accused was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1 Lakh, in default, to undergo further simple imprisonment for 6 months.

2 Heard the learned counsel appearing for the applicant / accused. He vehemently argued that the applicant / accused has undergone actually sentence of about 5 years. The learned counsel further argued that second bail application of the applicant / accused is maintainable because there is no likelihood of the appeal being heard in near future. The learned counsel for the applicant / accused placed reliance on judgments of the

Hon'ble Apex Court as well as Hon'ble Punjab and Haryana High Court as well as orders of this court, wherein according to the learned counsel for the applicant / accused, because of inability to hear the appeal, accused were released on bail. Those cases are as follows :

- 1) Kashmira Singh vs. State of Punjab
1977 Cri.L.J.1746 (Supreme Court)
- 2) Dal Chand and Ors. vs. State of Uttar Pradesh
2000 Cri.L.J. 4579 (Allahabad High Court)
- 3) Dharam Pal vs. State of Haryana
2000 (1) DMC 258 (High Court of Punjab & Haryana)
- 4) Tule Ram vs. State of Haryana
2005(4) RCR (Cri) 319 (High Court of Punjab & Haryana)
- 5) Daler Singh vs. State of Punjab
2007(1) RCR (Cri) 316 (High Court of Punjab & Haryana)
- 6) Parvez Akhtar Tajamul Hussain Siddique vs. State of Maharashtra – Criminal Bail Application No.1310 of 2015 (Bombay High Court)
- 7) Kamar Rashid @ Monu @ Munna Abdul Rashid Siddique vs. State of Maharashtra – Criminal Bail Application No.1424 of 2013 (Bombay High Court)
- 8) A.K.Chaturvedi vs. Central Bureau of Investigation
Criminal Appeal No.205 of 2015 (Delhi High Court)

3 By drawing my attention to paragraph 2 of the judgment of the Hon'ble Apex Court in the matter of Kashmira Singh (supra), the learned counsel for the applicant / accused vehemently argued that when a court is not in a position to dispose of a appeal for a period of 5 or 6 years, then the convict is entitled for bail. My attention is drawn to paragraph 3 of the said judgment wherein it is held by the Hon'ble Supreme Court that the appeal therein was of the year 1974 and there is no likelihood of it coming up for hearing for atleast another two years. It is further observed that the very fact that the court has granted to the appellant special leave to appeal against his conviction shows that in the opinion of the court, the appellant has *prima facie* a good case to consider. At this juncture, it is to be noted here that the appeal before this court is a statutory appeal which is admitted as a matter of right. The case in hand is not regarding leave to file an appeal. The learned counsel further relied on judgment of Dal Chand and Others (supra) to point out that if major part of sentence is already over and undue delay in hearing of appeal is there, then second bail application can be entertained. It was

argued that even Punjab and Haryana High Court in the matter of Daler Singh(supra) was pleased to categorise convicts according to sentence imposed and considered their release on undergoing imprisonment for the specified period. It is argued that even this court was pleased to release the appellants on bail when substantial sentence were undergone by them, by pointing out orders in the matter of Parvez Akhtar Siddique (supra) and Kamar Rashid (supra).

4 The learned APP opposed the application by submitting that those cases proceeded on their own facts. The learned APP further submits that the appeal would reach for final hearing and several appeals are already listed for final hearing.

5 I have carefully considered the rival submissions and perused the record and proceedings. In the case in hand, accusation against the present applicant / accused and against co-accused is to the effect that they were found to be having conscious possession over 70 kgs ganja – a narcotic drug on 26th

March 2012. Thereafter, on due trial, they were convicted and sentenced as indicated in the opening paragraph of this order. The nature and seriousness of offence are relevant considerations while releasing applicant / accused on bail. In the case in hand, it cannot be said that there is no iota of evidence against the applicant / accused. *Prima facie*, he is found to have committed the offence punishable under the NDPS Act after his due trial.

6 Considering the nature of offence alleged against the applicant / accused, I am not inclined to release him on bail though his appeal is pending before this court for a considerable period i.e. from the year 2013.

7 The application is, therefore, rejected.

8 The appeal be put up for final hearing.

(A. M. BADAR, J.)