

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.1171 OF 2016
IN**

CRIMINAL APPEAL NO.420 OF 2013

WITH

**CRIMINAL APPLICATION NO.1458 OF 2015
IN**

CRIMINAL APPEAL NO.420 OF 2013

Okocha Mike ... Applicant

V/s.

Union of India & Anr. ... Respondents

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**Mr.Taraq Sayyed with Ms.Sartaj Shaikh, Advocate for the
Appellant.**

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 25th JANUARY 2017.

P.C . :

1 These are applications for suspension of sentence and for releasing the applicant/accused on bail during pendency of the appeal filed by him before this Court.

2 Heard the learned Advocate appearing for the applicant/accused at sufficient length. By taking me through the evidence adduced by the prosecution as well as the impugned Judgment and Order, the learned Advocate argued that the

applicant/accused is behind bar at least for a period of eight years. He is sentenced to suffer rigorous imprisonment for 13 years for the offence punishable under Section 21(c) read with Section 8(c) read with Section 28 read with Section 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act" for the sake of brevity) by the learned Special Judge, Greater Bombay, Mumbai. As substantial part of the sentence imposed upon the applicant/accused is already undergone and the likelihood of the possibility that the appeal may not be heard in near future, the learned Advocate ultimately argued that applicant needs to be released on bail during pendency of the appeal on such conditions as may be deemed fit by this Court.

3 The learned Advocate further argued that the evidence of the prosecution is not sufficient to hold the applicant guilty of the alleged offence. He further argued that breach and lapses are committed of the statutory safeguard by the investigator which goes to the root of the case and ultimately there are every chances of applicant/accused succeeding in the appeal. With this, it is prayed that the applicant be released on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that considering the nature of offence alleged against the applicant/accused and the fact that it is held to be proved after conclusion of the trial that he is not entitled for release on bail.

5 I have carefully considered the rival submissions and also perused the impugned Judgment and Order apart from depositions of 11 witnesses examined by the prosecution. It is the case of the prosecution that the applicant/accused was intercepted in the night intervening 22/03/2009 and 23/03/2009 when he was about to board the flight of Ethiopian Airlines with his baggage. On checking the suitcase and bag of the applicant/accused, it was found that the bag of the applicant/accused was having a false bottom wherein allegedly two packets containing 1860 grams and 1230 grams heroin were kept concealed. After conducting necessary formalities of testing the seized contraband, the applicant/accused was charge-sheeted and ultimately he is held to be guilty of the offence punishable under Section 21(c) read with Section 8(c) as well as Section 28 read with Section 23(c), read with Section 8(c) of the NDPS Act.

6 Considering the nature of offences alleged and proved against the applicant after trial, though he has undergone substantial part of the sentence, he is not entitled to be released on bail. The nature of the crime is relevant consideration for granting bail. In this view of the matter, the following order :

- i) The both applications are rejected.

(A. M. BADAR J.)