

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1079 OF 2017
IN
CRIMINAL APPEAL NO.588 OF 2017**

Parshuram Premchand Kevat ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Ms.Beerta H.Baiwa i/b. Lalla & Lalla, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 5th APRIL 2018.

P.C. :

1 This is an application for suspension of sentence and
releasing the applicant/accused on bail during pendency of the
appeal filed by him.

2 The applicant/accused has been convicted of the
offence punishable under Section 8(c) read with Section 20(b)(ii)
(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985
(hereinafter referred to as 'NDPS Act' for the sake of brevity) and

is sentenced to suffer rigorous imprisonment for eight years apart from directing him to pay fine of Rs.One lakh and in default to suffer simple imprisonment for six months.

3 Heard the learned Advocate appearing for the applicant/accused at sufficient length of time. She took me through the depositions of all prosecution witnesses and raise specific contentions that the secret information was received by P.W.No.1 Gomase, police constable and as per hierarchy in the Police Department his immediate official superior is police head constable Nalawade (P.W.No.7). There is no evidence on record to show that secret information was transmitted to PHC P.W.No.7 Nalawade by P.W.No.1 Gomase, PC and, therefore, there is breach of Section 42 of the NDPS Act. The learned Advocate further argued that the charge-sheet shows that the investigation was conducted by P.W.No.7 Nalawade, PHC and, therefore, the trial vitiates as PHC Mr.Nalawade was not the officer in-charge of the Police Station. There is breach of Section 53 of the NDPS Act. The learned Advocate further argued that evidence of P.W.No.5 Pramod Waingankar, a panch witness shows that he had signed the printed panchanama at the office of Anti Narcotic Cell, Unit Kandivali and not on the spot of the incident. The panchanama was a printed panchanama.

4 To buttress the contention regarding violation of

Section 42 of the NDPS Act, the learned Advocate for the applicant/accused place reliance of following Judgments and Orders passed by the Honourable Apex Court and by this Court.

- (i) Judgment of the Honourable Apex Court in the matter of ***Sarija Banu @ Janarthani @ Janani & Anr. v. State through Inspector of Police in Criminal Application No.320 of 2004 (SLP No.5534 of 2003)*** dated 26/02/2004.
- (ii) Order of this Court in ***Criminal Application No.143 of 2011*** dated 22/02/2011 in between ***Shri.Suresh Somraju Ali v. The State of Maharashtra.***
- (iii) Order of this Court in ***Criminal Bail Application No.1311 of 2012*** dated 23/10/2012 in between ***Smt.Najma Abdul Shaikh v. The State of Maharashtra.***
- (iv) Order of this Court in ***Bail Application No.2108 of 2016*** dated 13/06/2017 in between ***Rajaram Kadu v. The State of Maharashtra.***
- (v) Order of this Court in ***Criminal Application No.1042 of 2013*** in between ***Bipin Kumar Ramsagar Pandit @ Saxena v. The State of Maharashtra*** reported in 2014(1) Bom.C.R. (Cri.) 486.

5 The learned Additional Public Prosecutor opposed the application by contending that *ganja* in bulk quantity has been seized from the possession of the present applicant/accused and Section 42 has no application to the case in hand because the seizure was effected on the public place.

6 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses and the record made available.

7 P.W.No.1 Gomase has received secret information which was to the effect that on 16/07/2013 from 2.30 p.m. to 3.30 p.m. a person named Parshuram will be coming at foot bridge of Borivali Railway Station for delivering the *ganja* to the customer. It is seen from the evidence on record that this information was recorded in the Information Register by P.W.No.1 Gomase and he had informed about this information to P.W.No.3 Vijay Bane, Police Inspector of the Unit. It is also seen from the evidence that P.W.No.7 PHC Nalawade had transmitted this information to the Assistant Commissioner of Police, ANC, Mumbai. The extract of the Information Register placed on the record of the trial Court shows that the extract of the Information Register was also sent to the Senior P.I. as well as to in-charge Police Inspector of ANC Unit, Mumbai.

8 So far as the principal contention of breach of provision of Section 42(2) of the NDPS Act is concerned, the search and seizure was not effected in a building, conveyance or enclosed place. It was effected on the foot bridge of the Railway Station and, therefore, relevant Section would be Section 43 of the NDPS Act. Even otherwise, the secret information was transmitted to official superiors and PHC Nalawade had stated that he had informed about the information by P.W.No.3 Vijay Bane. So far as provisions of Section 53 of the NDPS Act are concerned, those do not prohibit investigation of such offence by the police head constable. That Section relates with conferring the powers of the officer in-charge of Police Station to Heads of other Departments of the State.

9 Effect of evidence of panch witness P.W.No.5 Pramod Waingankar will have to be considered at the time of final hearing of the appeal. In the case in hand, the applicant/accused was found to be possessing 5 k.g. *Ganja* on 16/07/2013 and, therefore, considering the nature of offence and the evidence on record, the case in hand is not a case for grant of bail by suspending the sentence.

10 The application is, therefore, rejected.

(A.M.BADAR J.)