

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1285 OF 2018

IN

CRIMINAL APPEAL NO.861 OF 2018

Vijay Ramdular Singh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Ayaz Khan i/b. Mr.Dilip Mishra, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 4th OCTOBER 2018.

P.C. :

1 Leave to amend the prayer clause, as prayed by the learned Counsel for the applicant, is granted. Amendment be effected forthwith.

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

3 The applicant/accused is convicted for the offences punishable under Sections 8(c) read with Section 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'N.D.P.S.Act' for the sake of brevity). He is sentenced to suffer rigorous imprisonment for five years apart from direction to pay fine of Rs.25,000/- and in default to further undergo rigorous imprisonment for six months.

4 Heard the learned Counsel appearing for the applicant/accused. He argued that out of substantive sentence of five years, the applicant/accused has already undergone pre-trial detention of about two years and eight months. His conviction cannot be sustained in the wake of the fact that the Police Head Constable Edke had received the information and he himself has claimed to have undertaken all formalities including filing of the charge-sheet on conclusion of investigation by him. Therefore, the applicant deserves to be released on bail.

5 The learned Additional Public Prosecutor opposed the application by contending that the offence is held to be proved against the applicant/accused.

6 I have carefully considered the rival submissions and also perused the Judgment and Order of conviction and resultant sentence.

7 The applicant/accused is stated to be found possessing 30 grams of MD which is an intermittent quantity of the drug. *Prima facie*, it is seen that right from receiving the information regarding possession of the Psychotropic Drug till filing of the charge-sheet, the entire formalities were done by Police Head Constable named Edke.

8 Short sentence of imprisonment is imposed on the applicant/accused. He has undergone major portion of the substantive sentence imposed on him. The appeal filed by the applicant/accused may not be heard within the short span of remaining substantive sentence imposed on the applicant/accused. The investigation is done by the Head Constable, who claims to have received the information. In this view of the matter, the following Order :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant/accused should not repeat commission of similar offence in future.

(iv) The application is disposed of accordingly.

(A.M.BADAR J.)

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Gaikwad

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by Raju
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