

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

CRIMINAL BAIL APPLICATION NO.2065 OF 2019

Shivendu Prabhat Kamal Gupta

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Satish Maneshinde I/b. Lakshmi Raman, Advocate for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 8th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with NDPS Sessions Case No.24/2007. This case arises out of C.R. No.12/2007 registered at Haveli Police Station, Pune under Sections 18, 20(b), 25 and 27 of the NDPS Act, under Section 14 of the Foreigners Act and under Section 294 r/w. 34 of the IPC.

2. The applicant was arrested in connection with that offence and was released on bail pursuant to the order passed in MA No.109/2007, by the District Sessions Judge / Special Judge, Special Court under NDPS Act, Pune. That order was passed on 14/3/2007. Since the year 2007, the trial has not yet concluded and is still in progress. For the period of more than 12 years, the trial was just lingering on.

3. It is the prosecution case that since the year 2017, the applicant did not attend the Trial Court and therefore, warrant was issued by the Trial Judge on 18/7/2018. Pursuant to that warrant, the applicant was arrested after his surrender before the Court on 6/6/2019 and since then, he is in custody.

4. Heard Mr. Maneshinde, for the Applicant and Mr. Jadhav, Ld. APP for the State.

5. Mr. Maneshinde submitted that the applicant had attended the trial for about 33 dates as is evident from the

roznama. The roznama is annexed to the present application. He further submitted that whenever he could not remain present, the exemption application on his behalf was filed by his Advocate and on all these occasions, exemption was granted. He therefore submitted that the applicant never intended to abscond and not face the trial.

6. As against these submission, Ld. APP submitted that on 51 occasions the applicant was not present. From 2017 onwards he never attended the Court and therefore, the Court has issued NBW against him. He therefore opposed the grant of bail to the present applicant. He further submitted that the trial has already begun and two witnesses are already examined.

7. I have considered these submissions. The case is pending since the year 2007 and the charge was framed in the year 2008. The applicant has attended the Court dates on 33 occasions. The applicant was represented through an Advocate who had filed exemption applications on various dates. The

applicant did not remain present after the year 2017 and therefore, Ld. Trial Judge did not grant him exemption and issued NBW instead. Considering the long pendency of the trial it was difficult for the accused to attend on these numerous occasions. However, even then, there can be no justification for not attending the Court on any date after 2017. The Court in its discretion had granted exemption to the present applicant in the past. But since he did not remain present since the year 2017, he had to be arrested under a NBW. Therefore, no fault can be found in the action taken by the Trial Court. However, at the same time, it cannot be ignored that the applicant had to attend the Court in Pune and he has settled in Chennai. The applicant's passport is already deposited with the Court. Therefore, with some stringent conditions which would secure his presence during the pendency of the trial, at this stage, bail can be granted to the present applicant. It is also important to note that the quantity of contraband found with the present applicant was non commercial quantity. In this view of the matter, I am inclined to grant bail to the present applicant.

8. Ld. Counsel for the applicant has submitted that the applicant is willing to give a local surety and is willing to reside in Pune for next six months and directions can be issued to the Trial Court for concluding the trial within that period. The Trial Courts are undoubtedly burdened with heavy pendency, but this particular case is pending for more than 10 years. Therefore, it would be appropriate if the Trial Court gave some priority to this case. In this view of the matter, following order is passed

ORDER

(i) In connection with NDPS Sessions Case No.24/2007 pending before District Sessions Judge / Special Judge, Special Court under NDPS Act, Pune, the applicant is directed to be released on bail on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rs. One Lakh Only) with one or two local sureties in the like amount.

(ii) The applicant shall stay in Pune for six months from 1/9/2019, and attend the Trial Court on all dates.

(iii) The Ld. Trial Judge shall make efforts to complete the trial within a period of six months from 1/9/2019.

(iv) In case the trial is not completed within the stipulated period, the applicant is at liberty to apply for modification of these conditions.

(v) The applicant shall co-operate with the smooth progress of the trial.

(v) The application is disposed of.

(SARANG V. KOTWAL, J.)