

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1202 OF 2019
IN
CRIMINAL APPEAL NO.33 OF 2017

Shashikant Chandrakant Thorat	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ayaz Khan i/by Dilip Mishra for applicant.
Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th September 2020
(LD/VC)

PC :

1. This is an application for suspension of sentence and grant of bail pending final hearing and disposal of Criminal Appeal No.33 of 2017. The applicant has been convicted for the offence u/s 8(c) r/w Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- and in default to suffer simple imprisonment for six months.

2. Learned advocate for applicant submitted that the applicant was on bail during trial. He is in custody for a period of about three years and ten months. It is submitted that the applicant was allegedly found in possession of contraband Ganja weighing about 3 kgs. It is a non-commercial quantity. The commercial quantity envisaged under the provisions of NDPS Act for Ganja is 20 kgs. The rigors of Section 37 would not attract in this case qua applicant.

Although applicant was tried along with accused no.1 by invoking Section 29 of NDPS Act, the applicant has been acquitted for the offence u/s 29 of NDPS Act. The co-accused has been sentenced to suffer rigorous imprisonment for 20 years in view of the fact that he was found in possession of commercial quantity. Learned counsel further submitted that maximum sentence provided to the offence for which he has been convicted, is for a period of ten years. The minimum is not prescribed. The Trial Court has, however, awarded maximum punishment without taking recourse to Section 32(B) of NDPS Act which deals with the factors to be taken into account for imposing higher than minimum punishment.

3. In support of his submission learned counsel has relied upon several orders passed by this Court granting bail by suspending sentence of imprisonment in similar situation by considering the fact that the accused therein were convicted for having in possession of non-commercial quantity of contraband. He also relied upon the orders granting bail pending trial wherein the accused were convicted for the offence u/s 25A of NDPS Act. It is submitted that this Court has granted bail to the accused in several cases wherein the accused were found in possession of non-commercial quantity. It is submitted that sentence awarded by the Trial Court is arbitrary and there was no reason for awarding maximum punishment. Learned counsel relied upon decision of Supreme Court in case of R.Kumaravel Vs. Inspector of Police NIB CID (Criminal Appeal No.1056 of 2019) and contended that the accused therein was convicted for offences u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced to undergo rigorous imprisonment for two years and fine of Rs.5,000/-. The Supreme Court had reduced the sentence of

imprisonment of two years to one year. It is, therefore, submitted that maximum sentence imposed against applicant was not warranted.

4. Learned APP submitted that the applicant was found in possession of 3 kgs of contraband. The applicant has been convicted for the aforesaid offences. The offence is of serious nature. Hence bail may not be granted to the applicant.

5. The case of prosecution is that on 15th May 2014 on receipt of secret information trap was arranged and the accused were apprehended. The accused no.1 was found in possession of 22 kgs of Ganja which is commercial quantity and the applicant was found in possession of 3 kgs of Ganja. The contraband allegedly recovered at the instance of applicant is more than small quantity but less than commercial quantity. The maximum sentence provided for the offence u/s 8(c) r/w 20(b)(ii)(B) is ten years. The minimum is not prescribed. On perusal of the order framing charge it is apparent that although two persons were prosecuted for the offence, the specific charge framed against the applicant is u/s 20(b)(ii)(B) r/w Section 29 of NDPS Act. The Trial Court has convicted the applicant for the offence u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act. However, the applicant has been acquitted for the offence u/s 29 of NDPS Act. It is pertinent to note that Section 29 relates to punishment for abetment and criminal conspiracy. Both the accused were acquitted for the offence u/s 29 of NDPS Act.

6. The appeal is pending for final disposal and whether maximum sentence awarded by the Trial Court is arbitrary or not would be

decided at the time of final disposal of appeal. It is not disputed that the appellant was allegedly found in possession of non-commercial quantity of contraband.

7. The applicant had preferred application for suspension of sentence which was disposed of vide order dated 14th January 2019. In the said order it was made clear that the applicant was not heard on merits and liberty was granted to renew the prayer for grant of bail after six months. It was also observed that the Court is hearing appeals of the year 2014 but the accused are in jail for substantial time and it would not be proper to fix the matter for final hearing. I have perused the orders placed by learned counsel for applicant in support of submission that bail was granted pending appeal in similar circumstances. The order dated 17th April 2013 passed in Criminal Application NO.294 of 2013 relates to conviction for offence u/s 8(c) r/w Section 20(b) of NDPS Act. The applicants were on bail during trial. The sentence was suspended and bail was granted to the applicants therein. In Criminal Application No.197 of 2012 and other connected applications, bail was granted pending appeal. The applicants were on bail during trial. The applicants were convicted under Section 25(A) and 29 of NDPS Act. They were on bail during trial. They were sentenced to imprisonment for seven years. The Court considered the fact that appeals would not come up for hearing shortly. The order dated 12th October 2018 passed in Criminal Application No.540 of 2018 relates to accused who was convicted for offence u/s 8(c) r/w S.20(b)(ii)(B) of NDPS Act wherein the accused was sentenced to five years. The accused was on bail during trial. The Court observed that short sentence is awarded to the accused. He was on bail during trial. Bar of Section

37 is not applicable as the seized quantity is non-commercial. Vide order dated 18th November 2011 applicant in Application No.1617 of 2011 was granted bail pending trial by this Court. The accused was found in possession of controlled substance. By order dated 9th March 2012 passed in Criminal Bail Application No.250 of 2012 the accused was granted bail. The offence was under Section 25A of NDPS Act. The applicant in Bail Application No.1466 of 2015 was granted bail by this Court by order dated 23rd February 2016. The accused was allegedly found with controlled substance and charged for offence under Section 25A of NDPS Act. In the case of Kallumal Jaidmal Kukareja @ Kallumama Vs. State of Maharashtra (2018(2)AIR.Bom.R (Cri).675), this Court reduced sentence of imprisonment from ten years to two years for the conviction u/s 8(c) and 20(b)(ii)(B). Learned counsel for applicant also relied upon several other decisions. The Hon'ble Supreme Court in case of R.Kumaravel (supra) reduced the sentence of imprisonment to one year from two years imposed for conviction u/s 8(c) r/w S.20(b)(ii) (B) of NDPS Act.

8. The applicant is in custody for three years and ten months. The Trial Court has awarded maximum sentence. Considering the fact that applicant has been convicted for the aforesaid offence and the fact that he was allegedly found with non-commercial quantity and since he was on bail during trial, the sentence of imprisonment can be suspended during pendency of appeal preferred by applicant challenging the judgment and order of conviction.

9. Hence, I pass following order :

ORDER

- (i) The sentence of imprisonment awarded to the applicant vide judgment and order dated 20th December 2016 passed by NDPS Special Judge, Civil Civil and Sessions Court, Greater Bombay in NDPS Case No.165 of 2014 convicting the applicant for offence u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, is hereby suspended during pendency of Criminal Appeal No.33 of 2017, on executing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (ii) The applicant shall report Anti Narcotic Cell, Ghatkopar, Mumbai, once in three months on first Saturday of such month till further orders;
- (iii) The fine amount should be paid, if not paid already.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST