IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2029 OF 2020
IN
CRIMINAL APPEAL NO.591 OF 2020

1 Mubarak Dagadu Shaikh,
Age 28 yrs., Occ. Driver,
R/o Madhi, Tq. Pathardi,
Dist. Ahmednagar.

2 Dinkar Trimbak Tupe,
Age 51 yrs., Occ. Labour,
R/o Barhanpur, Tq. Newasa,
Dist. Ahmednagar.

... Applicants

... Versus ...

The State of Maharashtra

... Respondent

...

Mr. S.J. Salunke, Advocate for applicants

Mrs. V.S. Choudhary, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd FEBRUARY, 2021.

ORDER :

1 Present application has been filed for suspension of sentence by the appellants/applicants. The appellants/applicants have been convicted by

learned Special Judge, Beed on 18.07.2020 in Special (NDPS) Case No.3/2017. They have been sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.25,000/- (Rupees Twenty Five Thousand only) each, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2 Heard learned Advocate Mr. S.J. Salunke for appellants/applicants and learned APP Mrs. V.S. Choudhary for the respondent.

3 It has been vehemently submitted on behalf of the applicants/appellants that the learned Special Judge has not appreciated the evidence properly. The prosecution case was that the informant, who is Assistant Sub Inspector attached to Shirur Kasar Police Station got a secret information and then they had stopped a car in the intervening night of 24.07.2017 and 25.07.2017 at about 2.30 a.m. Appellant No.1 was found driving the car, whereas appellant No.2 was accompanying him. When the entire car was checked, police found ganja (cannabis) in the dickey. Panchnama was drawn and it was found that there were in all 48 packets of ganja, consisting of 2 k.gs. each. It is stated that samples were taken and after analysis it was found that it was ganja. In the evidence it has come on

record that the samples have not been taken and observation to this effect has been made by the Special Judge in his Judgment. However, he wrongly held that a sample has been taken properly in respect of one packet i.e. packet No.48 and then convicted both the applicants. It was not considered that there is violation of mandatory provisions of Section 41, 42, 50, 52-A and 57 of the N.D.P.S. Act, therefore, the appellants/applicants have every hope in success in the appeal. The appellants/applicants are in custody since 25.07.2017, therefore, more than half of the punishment has been undergone by them. On this ground also they deserve to be released on bail, till the pendency of the appeal.

4 Learned APP strongly opposed the application and submitted that even if it is held by the learned Trial Judge that samples have not been taken properly in respect of 47 packets, yet, even for that one packet, which was weighing 2.220 k.gs. of ganja, it can be said that the offence has been proved against them beyond reasonable doubt. A detailed Judgment has been given appreciating each and every piece of evidence, so also, the same defence was taken that the mandatory provisions have not been complied with, but it has been answered by the learned Special Judge. Therefore, the applicants do not deserve any sympathy.

5 At the outset, it can be said that the applicants were under trial

throughout the trial. They were in custody since 25.07.2017 till today. Therefore, they have undergone more than half of the sentence. Now, they have raised points that mandatory provisions have not been complied with, which are definitely required to be considered once again in the appeal. So also, when the trial Judge himself had observed that the samples have not been taken properly, then as regards one sample i.e. packet No.48, whether the criteria have been fulfilled, which were required as per the Act, is also required to be considered. Further, the appeal is admitted and it will take considerable time to decide the case. No doubt, the offences under N.D.P.S. Act will have to be viewed seriously; yet, in view of the decision in **Kiran Kumar vs. State of M.P., (2001) 9 SCC 211**, the sentence, that has been imposed against the present applicants, is small sentence, and therefore, they deserve to be released on bail.

6 Hence, the following order.

ORDER

1 The Criminal Application stands allowed.

2 The substantive sentence imposed on the applicants/appellants by the learned Special Judge, Beed vide Judgment and order dated 18.07.2020 in Special (NDPS) Case No.3/2017, is hereby suspended till

hearing and final disposal of Criminal Appeal No.591 of 2020.

3 The applicants viz. 1) Mubarak Dagadu Shaikh and 2) Dinkar Trimbak Tupe, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties of Rs.25,000/- (Rupees Twenty Five Thousand only).

4 The applicants shall not commit any criminal activity.

5 The applicants shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the Trial Judge to fix dates for their subsequent appearances.

6 In case of two consecutive defaults on the part of the applicants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

7 Bail before the Trial Court.

(Smt. Vibha Kankanwadi, J.)

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