

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.405 OF 2021
IN
CRIMINAL APPEAL NO.493 OF 2020**

Nazir Ahmad Mohamad Hajrat Shaikh & Anr.. Applicants

Vs.

The State of Maharashtra .. Respondent

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Mr.Advait Tamhankar i/b Mr.Taraq K. Sayed for the Applicants.

Mr.Y.Y.Dabake, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 31ST MARCH, 2021.

P.C:-

1. The appeal filed by the appellant is already admitted.

2. This is an application seeking stay of the judgment and order of conviction passed by the Special Court in NDPS Special Case No.23 of 2009 and praying for suspension of sentence. A categorical statement is made that the applicants were on bail, pending the trial and this statement is not disputed by the learned APP.

3. The learned counsel for the applicants has taken me through the impugned judgment and submitted that though the report of the Chemical Analyser has been the basis of the conviction, the Chemical Analyser has not stepped into the witness box and has not been examined. The fact of non-examination of the Chemical Analyser and mere reliance upon the report of the Forensic Science Laboratory, Pune, which is not reflective of the method adopted for analysis of the samples and the absence of any person to depose as to what was the method that was adopted to analyse the sample, is the core issue, which is required to be tested in the appeal.

4. The applicants have relied upon the decision of the learned Single Judge of this Court in case of **Mirza Qumer Hyder Vs. Mr.A.K.Thakker & Anr.**¹ and in case of **Bhanudas Vasantrao More Vs.Mr.A.K.Thakker & Anr.**². Reliance is also placed on the order passed by the learned Single Judge of the Gujarat High Court in the case of **Suleman Usman Memon Vs. The State of Gujarat**³, which has been relied upon in the case of **Mirza Qumer Hyder** (supra). This line of judgment, according to the learned counsel, reiterates the importance of examining the Chemical Analyser and particularly, discusses the position of the said evidence and its evidentiary value in terms of the Indian Evidence Act and in particular, Sections 45 and 51.

5. The learned APP has placed reliance on a decision of the learned Single Judge of this Court in case of **Pradeep**

1 Cri. Appeal No.554 of 2006 decided on 31/01/2018

2 Cri. Appeal No.555 of 2006 decided on 31/01/2018

3 AIR 1961 Guj 120

Ramniklal Bhat Vs. The State of Maharashtra⁴ and he would submit that since particular point or objection about non-examination of the Chemical Analyser was not taken at the time of trial, the trial court had no opportunity to deal with the said issue and for the first time, this has been raised in appeal. *Prima facie*, I do not find any merit in the submission since Section 386 of the Cr.P.C. empowers the appellate court to re-appreciate the prosecution evidence. This, however, has to be considered at the time of final hearing of the appeal. On consideration of the fact that the applicants were already on bail, pending the trial, the present application is allowed in terms of prayer clauses (a) and (b).

6. The impugned sentence passed in NDPS Special Case No.23 of 2009 against the applicants is suspended. The applicants are directed to be released on bail on the same terms and conditions as they were, pending trial, with fresh bond and sureties.

SMT. BHARATI DANGRE, J.

⁴ Criminal Appeal No.337 of 2000 decided on 12/09/2006