

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 559/2021 IN
CRIMINAL APPEAL NO. 406/2021

(Shubham S/o Satyaniwas Arjunwar Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. V. Bhutada, Advocate for applicant.
Shri A. R. Chutke, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 24.11.2021.

Heard

2. This is an application seeking suspension of execution of sentence passed in Sessions Trial No. 329/2021 by the Additional Sessions Judge – 7, Nagpur vide judgment dated 04.09.2021. The Trial Court held applicant (accused No.1) guilty for offence punishable under Section 420 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 5000/- with default clause.

3. It is the prosecution case in short that on receipt of secret information, the Police have intercepted applicant who was allegedly black marketing of Remdesivir vial badly needed in pandemic situation. The prosecution has examined total 15 witnesses to establish the levelled charge. Co-accused Jyoti was also convicted by the Trial Court for offence punishable under Sections 381 and 420 of the Indian Penal Code. It was alleged that

Jyoti was serving as a Staff Nurse in Gayakwad Hospital who has allegedly stolen Remdesiver vial and had handed over to the applicant for sale on higher prices.

4. Learned counsel for the applicant submitted that though the prosecution has examined 15 witnesses, the Trial Court failed in appreciating the evidence of seizure in proper perspective. He took me through the evidence of PW-3 panch witness and along with PW-7 a Police person to impress that Seizure Panchanama (Exh. 14) was tainted since it was prepared at Police Station. It is the submission that the entire case of prosecution is mainly based on the point of seizure of Remdesiver vial from applicant Shubham so far as he is concerned. Besides, he took me through the evidence of PW-1 Shreya who has not supported the stand of PW-6 who stated that co-accused assured her to provide the vial. It is brought to the notice that CDR has not been produced.

5. The State resisted this application by filing reply affidavit. The entire prosecution story has been narrated. The evidence in brief has been stated and ultimately, application is prayed to be rejected on the ground of seriousness of the offence.

6. The applicant was also charged under the provisions of Essential Commodities Act along with Drugs and Cosmetics Act, however he was acquitted from those charges. The conviction is under Section 420 of the Indian Penal Code only. The applicant is in Jail since 18.04.2021 till date. The Trial Court has imposed sentenced to undergo imprisonment for five years. Normally, when the

fixed term of sentence is imposed then unless exceptional circumstances emerges, execution of sentence has to be suspended. The applicant has pointed that he has arguable case on merits. Moreover, he has submitted that applicant has no criminal antecedents. Having regard to the nature of accusation, there are hardly chances of repetition of crime. In case of rejection of this application, there could be no reversal of pre-trial detention, if applicant succeeds in appeal. Learned counsel for the applicant has submitted that if fine has not already been paid then it would be paid. Having regard to these facts, following order:-

- (I) The criminal application stands allowed.
- (II) The execution of substantive sentence passed in Sessions Trial No. 329/2021 by the Additional Sessions Judge, Nagpur vide order dated 04.09.2021 stands suspended till final disposal of appeal.
- (III) In the meantime, the applicant – Shubham S/o Satyaniwas Arjunwar be released on bail on his furnishing P. R. bond of Rs. 50,000/- with one surety in the like amount.
- (IV) The Trial Court shall ensure about the deposit of fine amount before releasing the applicant on bail.

JUDGE