

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

CRIMINAL APPLICATION (APPA) NO. 588 OF 2021 IN
CRIMINAL APPEAL NO. 421 OF 2021

Sheikh Arif s/o Sheikh Rafique (Sheikh Arif s/o Sheikh Rashid)

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri A.S. Manohar, Advocate for applicant.

Shri S.D. Sirpurkar, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 25/11/2021

Heard.

2. This is an application seeking suspension of execution of sentence passed by the Additional Sessions Judge-7, Nagpur in Sessions Trial No.324 of 2021 dated 02.08.2021. The Trial Court held applicant/appellant guilty for the offence punishable under Sections 381, 420 of the Indian Penal Code, Section 3 read with Section 7 of the Essential Commodities Act and Section 18(c) read with Section 27(d) of the Drugs and Cosmetics Act. Though the Trial Court has imposed different sentence for each offence, the maximum sentence is to undergo rigorous imprisonment for the period of 5 years along with total fine of Rs.35,000/-. All sentences were directed to run concurrently.

3. Learned Counsel for the applicant took me through the impugned judgment and order along with the evidence recorded in the trial. It is submitted that

seizure of Remdesivir vial (injection) from the possession of the applicant, who was a ward boy, is doubtful. To substantiate said contention, he took me through the evidence of P.W.11 Dr.Murli Ammal and also the evidence of P.W.7 Panch Witnesses. It is pointed out that while applicant was leaving from the Hospital, he was accosted on suspicion of theft. Though the applicant was made to sit in a separate room, however, his bag containing stolen material, was kept with the receptionist. To support the said contention, cross-examination of P.W. 11 is pointed out. Moreover, it is submitted that seized material was not sealed. On the other hand, it is shown from the evidence that the seized material was used for the patients.

4. As regards to charge of theft of Remdesivir injection is concerned, it is argued that the evidence of concerned witnesses i.e. P.W.2 and P.W.3 are not believable sans details. It is the submission that there was no record regarding missing of Remdesivir vials from the Hospital, which was kept as per the directions issued by the Collector. Learned Counsel for the applicant pointed from the evidence that there was CCTV camera installed throughout the Hospital. Since there is no CCTV evidence, by placing reliance on the decision of the Hon'ble Supreme Court in the case of *Tomaso Bruno and anr. vs. State of U.P. (2015) 7 SCC 178*, it is submitted that adverse inference can be drawn. Having regard to these

submissions based on record, the applicant has made out an arguable case on merits.

5. The applicant has deposited entire fine amount on 04.08.2021 in the Trial Court. He is in jail from 24.04.2021 i.e. from last seven months. In case of success in appeal, the position would become irreversible about his under trial detention. Generally, unless there are exceptional circumstances, execution of sentence can be suspended when the accused is imposed with fixed terms of sentence. The Appeal will take considerable time for its disposal in accordance with law. Having regard to all above circumstances, the case for suspension of substantive sentence is made out. In view of that execution of substantive sentence passed in Sessions Trial No.324 of 2021 by the Additional Sessions Judge-7, Nagpur dated 02.08.2021 is hereby suspended till the final disposal of appeal.

6. In the meantime, the applicant shall be released on bail on his furnishing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.

7. The applicant shall attend dates of hearing in the appeal.

JUDGE