

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

CRIMINAL APPLICATION [APPA] NO. 640/2021
IN CRIMINAL APPEAL NO. 472/2021.

Kunal Anilrao Powale -**Versus**- State of Maharashtra, through P.O. Kamptee, District Nagpur.

CRIMINAL APPLICATION [APPA] NO. 670/2021
IN CRIMINAL APPEAL NO. 497/2021.

Shubham Krushnaji Mohadure -**Versus**- State of Maharashtra, through P.O. Kamptee, Nagpur.

CRIMINAL APPLICATION [APPA] NO. 666/2021
IN CRIMINAL APPEAL NO. 494/2021.

Sumit Laxman Bagde -**Versus**- State of Maharashtra, through P.O. Kamptee, Nagpur.

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

Court's or Judge's orders

S/Shri S.P. Bhandarkar and R.M. Daga, Advocates for
Applicants.

Shri I. Damle, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 06, 2021

Heard.

2. These applications are filed by applicants / appellants seeking suspension of execution of substantive sentence passed in Sessions Case No.316/2021 by the Additional Sessions Judge-6, Nagpur on 25.10.2021. Though applicants were charged for the offence punishable under Sections 188, 120-B, 381, 420 read with Section 34 of the Indian Penal Code, Section 3 of Essential Commodities Act and Section 18[c] of the Drugs and Cosmetics Act. However, the trial Court has acquitted

them from all offences, except for Section 420 read with Section 34 of the Indian Penal Code. The trial Court has imposed sentence to suffer rigorous imprisonment for 5 years, along with fine of Rs.5000/- with default clause. The non-applicant State has resisted these applications by filing separate reply affidavits. The prosecution case in brief and evidence has been narrated.

3. The learned Counsel for applicants primely submitted that during the course of trial though several witnesses have been examined, however, offence of cheating has not been proved.

4. With the assistance of both sides, I have gone through the impugned judgment and evidence recorded during trial. My attention has been invited to points of determination framed by the trial Court while deciding the case. Particularly in point no.1, the trial Court has expressed that the prosecution has failed to prove that all the accused [including applicants] have knowingly flouted the orders issued by the Collector pertaining to Remdesivir vials.

5. All applicants are working as male nurse in different hospitals. The trial Court has noted that there was no report about theft from the hospitals where applicants were working, hence, it is not established that applicants have committed theft of Remdesivir vials.

6. Perusal of the impugned judgment reveals that since

some Remdesivir vials were found in possession of applicants, the trial Court has expressed that they were for sale in black market. It is argued that there is no material placed by the prosecution to establish that applicants have deceitfully induced someone and thereby committed the offence. In order to impress the essentials of the offence of cheating the learned Counsel for applicants have relied on the following decisions :-

- (1) **Jageshwar Singh Rastogi .vrs. State of Madhya Pradesh – 1990 Supp SCC 179.**
- (2) **Archana Rana .vrs. State of Uttar Pradesh and another – (2021) 3 SCC 751.**
- (3) **Mohammad Ibrahim and others .vrs. State of Bihar and another – (2009) 8 SCC 751.**
- (4) **Samir Sahay @ Sameer Sahay .vrs. State of Urttar Pradesh and another – (2018) 14 SCC 233.**
- (5) **Uma Shankar Gopalika .vrs. State of Bihar and another – (2005) 10 SCC 336.**

Undoubtedly these principle needs consideration.

7. It is brought to my notice that there is no evidence of witness to say that they have been cheated by these applicants. According to learned Counsel for applicants, the findings recorded by the trial Court are self contradictory.

8. These applicants were arrested in a case of serious nature, however, that cannot be the sole criteria for deciding these applications. Having regard to the fact that the trial Court

has acquitted applicants from the offence under the Drugs and Cosmetics Act and Essential Commodities Act, the matter requires consideration on merits. Submission that offence of cheating is not established needs re-assessment. Rather applicants have made out an arguable case on merits.

9. The trial Court has imposed a fixed term of sentence i.e. of 5 years of imprisonment along with fine. Normally where the fixed term of sentence is imposed, in absence of any special feature, the execution of sentence needs to be suspended. The appeals will take its own time for disposal. Applicants are already in jail from last 6 months. In case the applicants/appellants succeed in the appeal, an irreversible position about their pre-trial detention would occur. Having regard to these facts following order is passed.

- (i) Criminal Applications are allowed and disposed of.
- (ii) The execution of substantive sentence imposed by the Additional Sessions Judge-6, Nagpur vide judgment passed in Sessions Trial No.316/2021 on 25.10.2021, shall stand suspended in respect of applicants - Kunal Anilrao Powale (Criminal Application [APPA] No. 640/2021 in Criminal Appeal No. 472/2021); Shubham Krushnaji Mohadure (Criminal Application [APPA] No.670/2021 in Criminal Appeal No.497/2021) and Sumit Laxman Bagde (Criminal Application [APPA] No. 666/2021 in Criminal Appeal No. 494/2021), till the final disposal of their appeals.
- (iii) In the meantime, aforesaid applicants be released

on bail on their executing P.R. Bond in the sum of Rs.50,000/- each, with one surety in the like amount.

- (iv) Deposit of fine amount shall be the condition precedent for execution of this order. The trial Court shall ensure deposit of fine amount before issuing release orders.

JUDGE

Rgd.