

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1020 OF 2022
IN
CRIMINAL APPEAL NO. 213 OF 2022**

Vicky @ Nitin Pravin Jadhav ... Applicant
Versus
The State of Maharashtra ... Respondent

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Mr. Shivraj B. Kadu, Advocate for applicant
Smt. D. S. Jape, APP for respondent

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CORAM : R. G. AVACHAT, J.

DATED : 05th APRIL, 2022

PER COURT :-

. Heard.

2. The applicant has been convicted for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and therefore, sentenced to suffer rigorous imprisonment for four (4) years, as it was the case of small quantity, and directed to pay fine of Rs.20,000/-, in default, to suffer rigorous imprisonment for one month.

2. The learned APP relies on Section 32-A of the NDPS Act to submit that no sentence of imprisonment would be suspended in view of this Section.

3. It is a case of short term sentence. There is no likelihood of the appeal to come up for final hearing in near future. The Apex Court in the case of *Dadu alias Tulsidas vs. State of Maharashtra – 2000 CRI. L. J. 4619* has held :-

“(B) Narcotic Drugs and Psychotropic Substances Act (61 of 1985), S.32A – Constitution of India, Art.21 – Section 32-A to the extent it takes away right of Appellate Court to suspend sentence of convict under Act – Is unconstitutional. Criminal P.C. (2 of 1974), S.389 -”

In view of the same, the learned APP is not justified in relying on Section 32-A of the NDPS Act.

4. Since it is a case of short term sentence and the appeal is not likely to be heard in the immediate future, the substantive sentence of imprisonment to stand suspended, pending the appeal. The applicant be released on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond in the like amount.

5. The criminal application stands disposed of.

[R. G. AVACHAT, J.]