

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL INTERIM APPLICATION NO.749 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO.763 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO.3421 OF 2021
IN
CRIMINAL APPEAL NO.186 OF 2018**

Rohit Rana .. Applicant/Appellant

Versus

State of Maharashtra .. Respondent

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Mr.Advait Tamhankar i/b. Mr.Taraq Sayed, Advocate for the Applicant/Appellant.

Mr.Arfa Sait, APP for the Respondent – State.

Mr.Shreeram Shirsat a/w. Mr.Amandeep Singh, Advocate for Respondent – NCB.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 22, 2022.

P.C. :

This is an application for suspension of the sentence imposed in default of payment of fine.

2 The applicant has been convicted for the offence under Section 8(c) read with 20(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (“N.D.P.S. Act”, for short), and, sentenced to suffer imprisonment for 10 years, and, to pay fine of Rs.1,00,000/-. In default of payment of fine, he is directed to undergo imprisonment for one year.

3 Learned advocate for the applicant submitted that the applicant is in custody from the date of arrest. He has undergone the entire substantive sentence of imprisonment. However, since the applicant has been directed to deposit fine of Rs.1,00,000/-, and, in default of payment of fine, he has been sentenced to suffer imprisonment of one year, the applicant continues to be in custody. The financial condition of the applicant is poor. He is not in a position to deposit the fine amount. Since last several years, he is in custody. He has no income. The Appeal challenging the conviction of judgment has been admitted by this Court, and, it is pending for final disposal. In this circumstances, the sentence of fine be suspended, till the final disposal of Appeal. He relied upon the decision of the Apex Court in the case of *Satyandar Kumar Mehra Alias Satendera Kumar Vs. State of Jharkhand*¹.

4 Learned APP has tendered the report from Kolhapur Central Prison, Kalamba, Kolhapur, which indicate that as on 28th February, 2022, the applicant has undergone the imprisonment of 9 years, 10 months and 19 days, which would mean by now the applicant has already undergone the substantive sentence of imprisonment.

1 (2018) 15 SCC 139

5 Learned counsel for respondent submitted that the applicant has been convicted for the offence punishable under the N.D.P.S. Act. The discretion may not be used for the reliefs sought by the applicant. It is also submitted that the decision relied upon by the learned counsel for the applicant is not applicable in the facts of this case.

6 Undisputedly, the applicant has been convicted for the aforesaid offences. He has completed substantive sentence. He is apparently undergoing the default sentence for not depositing fine. The Appeal challenging the judgment of conviction has been admitted by this Court. If the reliefs sought in this application is not granted, the Appeal may get infructuous. Considering the exceptional facts of this case as stated above, the sentence of payment of fine is suspended, till the final disposal of Criminal Appeal No.186 of 2018.

7 Interim Application No.749 of 2022, stands disposed of.

8 In view of order passed in Interim Application No.749 of 2022, Interim Application No.763 of 2022 and 3421 of 2021 are disposed of.

(PRAKASH D. NAIK, J.)