

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1000 OF 2022
IN
CRIMINAL APPEAL NO.1091 OF 2019

Siraj Sultan Panjwani

Applicant

versus

Union of India and another

Respondents

Mr.Anil Lalla i/by Lalla & Lalla, Advocate for applicant.

Mr.Sandesh Patil with Mr.Chintan Shah, Advocate for Union of India.

Mr.Arfa Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th April 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.1091 of 2019.

2. The applicant was prosecuted for offences under Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short). Vide judgment and order dated 15th July 2019 passed by the Court of NDPS Special Judge, City Civil and Sessions Judge, Greater Bombay, in NDPS Special Case No.28 of 2018 @ 103/2016 @ 11/2018. The applicant has been convicted for the offence punishable under Sections 22(c) read with Section 8(c) of NPDS Act, and sentenced to undergo imprisonment of 10 years and to pay fine of Rs.1,00,000/-. He is also convicted for the offence under Section 29 read with Section 22(c) read with Section 8(c) of NDPS Act, and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-. Both the substantive sentences were directed to run concurrently.

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3. Learned advocate for applicant has urged that the sentence of imprisonment imposed by the Trial Court may be suspended and the applicant be granted bail. The applicant has undergone the sentence of six years and five months. The maximum sentence imposed by the Trial Court is ten years. The appeal preferred by the applicant has been admitted. The appeal would not come up for hearing within short span of time.

4. Learned advocate for applicant further submitted that the applicant is entitled for bail on the ground of parity. The co-accused Kaluram Chaudhary (accused no.4) had preferred an application for suspension of sentence and grant of bail before this Court which has been allowed by order dated 26th February 2022. The sentence of imprisonment was suspended on the ground that said convict was in custody for a period of about 6 years and 5 months.

5. Learned advocate for respondent no.1 has submitted that there cannot be dispute that co-accused had preferred application before this Court and on the ground that he was in custody for the aforesaid period which this Court has suspended the sentence and granted bail to him. It is submitted that prayer for suspension was opposed by the counsel for respondent no.1 in the said application by relying on the several decision. The respondent no.1 herein is opposing the relief on the same grounds.

6. While allowing the application preferred by co-accused Kaluram Chaudhary this Court has taken into consideration several decisions relied upon by both sides. The applicant therein had

contended that prolonged custody can be considered as a ground for suspension of sentence, whereas respondent no.1 had objected the relief by relying on certain decisions and on the basis of submission that there are restrictions on grant of bail u/s.37 of NDPS Act. After recording the submissions of both the sides, in paragraph 11 of the said order dated 26th February 2022, it was observed that from the tenor of the decisions of the Supreme Court referred to therein, the sentence of imprisonment was suspended pending appeal. The Court had considered the fact that accused therein was convicted under NDPS Act and his appeal was pending. There were remote chances of hearing the appeal immediately and convicts was in custody for a substantial period of time. The observations made in the order dated 26th February 2022 are squarely applicable in the present application. The applicant is the co-accused in the said case. Hence, case for suspension of sentence and grant of bail is made out.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment awarded vide judgment and order dated 15th July 2019 by NDPS Special Judge, City Civil & Sessions Court, Greater Mumbai in NDPS Special Case No.28 of 2016, is suspended and the applicant is directed to be released on bail on executing PR bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;
- (iii) The applicant shall deposit his passport in the Registry of this Court;
- (iv) The applicant shall not leave India without prior permission of this Court;
- (v) The applicant shall attend Trial Court once in three months on first Saturday of the month'

- (vi) In the event there are two consecutive defaults in attending the Trial Court, the said fact may be brought to notice of this Court. In such eventuality, the prosecution is at liberty to move an application for cancellation of bail;
- (vii) The applicant shall furnish his current residential address while executing bail bond before Trial Court.

(PRAKASH D. NAIK, J.)

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