

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

**INTERIM APPLICATION NO. 1196 OF 2021
IN
CRIMINAL APPEAL NO. 330 OF 2021**

Ashok Sudhiram Jaiswar ...Applicant/Appellant
Versus
The State Of Maharashtra ...Respondent

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Mr. Rajendra S. Bidkar, Advocate for the Applicant/Appellant.
Ms. P. N. Dabholkar, APP for the Respondent-State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 11th APRIL, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.330 of 2021.
2. The applicant has been convicted by judgment and order dated 12th January, 2021, for offence punishable under Sections 20 & 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to suffer 10 years rigorous imprisonment and fine of Rs.1,00,000/-.
3. The prosecution case is that on 10th April, 2015, information was received that the accused stored charas at his Pan stall situated at Naupada, Thana and he is likely to sell it. The raiding party visited the spot. The accused was present at the spot. He was asked to open box at the stall. On opening the box, two

plastic bags containing the contraband were found. It was identified as charas. The weight was 2 Kg. 800 grams. Accused was arrested. On completing investigation, charge-sheet was filed against him.

4. Learned Advocate for the applicant submitted that the applicant is in custody from 19th April, 2015. He has undergone sentence of about 7 years. The appeal challenging the judgment of conviction may not be listed for hearing immediately. There are serious discrepancies in the evidence. On the labels of Muddemal seized C.R. number could not have been reflected since C.R. number is available only after the registration of First Information Report (for short 'FIR'). The panchanama was not recorded at the spot. According to prosecution, the accused had opened the bags kept in box by using key. However, the lock and key were not seized during investigation. After the seizure of articles the contraband was kept in a warehouse. However, the warehouse were not produced during trial. There was no endorsement on the warehouse about the time when the muddemal was received. The evidence of witnesses is contradictory. The applicant is in jail since 7 years. He is not in a position to deposit fine amount. The financial condition of the applicant is poor. Hence, payment of fine may be dispensed with pending the appeal.

5. Learned APP submitted that the applicant has been convicted for offences under the NDPS Act. There is sufficient evidence against the applicant. The trial Court has convicted him on the basis of evidence. Minor discrepancies does not affect the prosecution case. Charas was recovered at the instance of the applicant. It was commercial quantity. Hence, sentence may not be suspended.

6. Undisputedly, the applicant is in custody almost for period of 7 years. The appeal is admitted recently. The appeal may not come up for hearing immediately. PW-1 has stated that he was member of raiding party. Information was received by Police Naik, Sonawane. It was reduced into writing. The raiding party visited the Pan Stall. There was cabinet with door and lock at Pan Stall. The accused opened the cabinet door with the keys which he was possessing. There was recovery of charas. Panchanama was prepared. Accused was arrested. The seal was brought from the crime branch, office. According to PW-1 they don't have their own seal. He admitted that the keys by which the accused had opened the cupboard was not seized at his presence. He do not recollect as to what happened to the key. There is no reference in the complaint that test was conducted by taking out pinch of substance from each packet. The fact that by taking out pinch of substance

from each packet, two samples were drawn was remained to be referred to in the complaint inadvertently. He cannot say whether the said fact is referred in panchanama. PW-2 was a Senior P.I. He received information on 19th April, 2015 that the accused had stored charas and he is likely to sell it. On opening the bags at stall charas was recovered. He admitted that C.R. number is given only after registration of FIR. C.R. number was registered after the complaint of PW-1. He did not refer to exact position of the seal on the envelope in the panchanama. Exhibit – 29 does not bear seal and signature of receiving officer and muddemal numbers. There was no muddemal numbers on muddemal envelope. PW-3 is the panch witness. He was called on 19th April, 2015 by Police Hawaldar, Bhosale. The other panch was not known to him. He was asked to take personal search of Police personnel. He referred to the raid conducted by the Police and recovery of contraband. He stated that he was working as a driver at Bhiwandi. He has given his occupation as service. Police Head Constable Bhosale has having his employee number and he called him at Narcotic Cell by making call. He was working as driver by friend of Head Constable, Bhosale. PW-4 Dilip Sonawane was attached to Anti-Narcotic Cell. According to him he received information about the charges being kept by accused. He provided the information to

Police Hawaldar Bhosale. He do not have any document to show that he was present on duty on 19th April, 2015. He did not make reference at the time when information was noted down in Khabari Book. The applicant is in jail for last Seven Years. According to him he is not in a position to deposit fine.

7. Considering the aforesaid aspects following order is passed :

ORDER

- i. Interim Application No. 1196 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.330 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 12th January, 2021 passed by learned District Judge-2 & Additional Sessions Judge, Thane in NDPS Case No.41 of 2015 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- iv. The applicant is permitted to deposit amount of Rs.50,000/- towards the fine within a period of eight weeks from the date of release.
- v. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

vi. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)