

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPA] No.718 of 2021

in

Criminal Appeal No.532 of 2021

Nikhil s/o Balwant Dahake

vs.

State of Maharashtra, through P.S.O. Ranapratap Nagar, Nagpur

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 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

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Court's or Judge's Orders

Mr. Amol Hunge h/f Mr. O.K. Masurke, Advocate for the Applicant.
Mr. S.D. Sirpurkar, A.P.P. for the Non-Applicant.

CORAM : SURENDRA P. TAVADE, J.

DATE : 10th FEBRUARY, 2022.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

02] This is an application for suspension of sentence and grant of bail. The applicant along with two persons were prosecuted for the offences punishable under Sections 188, 381, 420 read with Section 34 of the Indian Penal Code; Section 3 read with Section 7 of the Essential Commodities Act and Section 18(c) read with Section 27 of the Drugs and Cosmetics Act, 1940. The applicant is held guilty for the offences punishable under Section 420 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for six months. He is also held guilty for the offence under Section 3 punishable

under Section 7 of the Essential Commodities Act and has been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for two months. The co-accused have been acquitted of the offences charged against them.

03] The learned Counsel for the applicant submits that the prosecution has relied on 23 witnesses, but failed to establish that the applicant purchased Remdesivir Injections from original accused No.2. It is contended that the prosecution has also failed to prove the link between the applicant and the co-accused. It is contended that the applicant has no criminal antecedents and he is in custody since 26/04/2021. It is contended that there is no possibility of hearing of this appeal in near future. Hence, it is prayed that the applicant be released on bail by suspending the substantive sentences imposed upon him till final disposal of the appeal.

04] Reply is filed by the prosecution, wherein it is contended that upon receiving secrete information, the applicant was trapped. The Investigating Officer seized Remdesivir Injections from the applicant. The prosecution has proved the seizure-panchnama. Therefore, it is established that the applicant was indulging in illegal selling of Remdesivir Injections. It is contended that the trial Court has appreciated the evidence in proper perspective. There is a strong evidence against the applicant. The offence committed by the applicant is serious in nature and it is against the humanity.

05] The learned A.P.P. has expressed that the applicant may indulge in the activity of supplying injections again. He also submits that the third wave of Covid-19 has started, therefore, there is a possibility of repetition of incident by the applicant. Hence, it is prayed that the application be rejected.

06] On the other hand, the learned Counsel for the applicant submits that by putting stringent conditions, the alleged illegal activity of the applicant can be prevented.

07] Perused the judgment and order passed by the trial Court in Sessions Trial No.318/2021. It appears from the theory of the prosecution that the applicant brought Remdesivir Injections from original accused No.2. Accused No.3 has supplied the Injections to original accused No.2. But, original accused Nos.2 and 3 have been acquitted. It appears that on the basis of secrete information, trap was laid by the police against the applicant. The applicant was found in possession of Remdesivir Injections and was not in a position to give proper explanation, therefore, he was prosecuted, but the trial Court has held the applicant guilty for the offences punishable under Section 420 of the Indian Penal Code and under Section 3 punishable under Section 7 of the Essential Commodities Act. The evidence led in the trial Court is required to be re-appreciated in the appeal. Due to pandemic situation, there is no possibility of hearing of this appeal. The applicant is already in jail for more than nine months.

08] In view of the above submissions, in my opinion, the applicant is required to be released on bail by suspending his sentence. Hence, I pass the following order:

ORDER

- i. The application is allowed.
- ii. The substantive sentence imposed upon the applicant is hereby suspended till final disposal of this appeal.
- iii. Applicant-Nikhil Balwant Dahake is ordered to be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with a solvent surety in the like amount, before the trial Court.
- iv. The applicant is directed not to indulge in supply of drugs of any sort to any person.
- v. The applicant is also directed to attend the concerned Police Station on 10th of every month between 10:00 am and 12:00 pm till September, 2022.
- vi. The applicant is further directed to attend the hearing of the appeal regularly.

JUDGE

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