

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

CRIMINAL APPLICATION (APPA) NO.736/2021

IN

CRIMINAL APPEAL NO.553/2021

Aniket S/o. Moreshwar Nandeshwar and Anr. Vs. State of Maharashtra

WITH

CRIMINAL APPLICATION (APPA) NO.769/2021

IN

CRIMINAL APPEAL NO.574/2021

Sumit S/o. Sukhdevrao Monohare Vs. State of Maharashtra

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

Court's or Judge's orders

In Criminal APPA No.736/2021.

Mr. R. B. Gaikwad, Advocate for Applicants/Appellants.

Mr. A. S. Ashirgade, A.P.P. for Non-applicant/Respondent/State.

In Criminal APPA No.769/2021.

Mr. Amol Hunge, Adv. h/f. O. K. Masurke, Advocate for Applicant/Appellant.

Mr. S. D. Sirpurkar, A.P.P. for Non-applicant/Respondent/State.

CORAM : SURENDRA P. TAVADE, J.

DATE : 10/01/2022.

1. This is an application for suspension of sentence and bail after conviction in Sessions Trial No.323/2021.

2. The applicants along with two persons have been prosecuted for the offences punishable under Sections 188, 381, 420 read with 34 of the Indian Penal Code along with Section 3 and 7 of the Essential Commodities Act and Section 18(C) and 18(a)(i) punishable under Section 27 of the Drugs and Cosmetics Act, 1940.

3. The applicants are held guilty for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code and they have been sentenced to suffer rigorous imprisonment for 5 years and to pay fine of

Rs.5,000/- each and in default to suffer simple imprisonment for 6 months.

4. According to the prosecution, one Bhavesh (PW-2) was working as Accountant-cum-Administrator at Inarch Hospital, Mirchi Bazar, Nagpur. The said hospital was providing treatment to the patients infected by Covid-19. One patient Ramesh Mahadeo Barde was admitted in the said hospital for treatment of covid-19. On 19.04.2021 Dr. Vaibhav Jaiswal was treating him and advised the son of patient namely Amol Barde to obtain one Remdesivir injection. On the next day at about 5.30 p.m., Amol came at hospital with one Remdesivir injection. He was accompanied with two persons namely Aniket and Abhilash. Dr. Jaiswal had doubt about the contents of vial of injection. Therefore, he inquired with Amol (PW-3) from where he purchased the said injection. On enquiry Amol (PW-3) submitted that he bought the injection from the applicants who were accompanied with him. Dr. Jaiswal inquired with the applicants. They did not give satisfactory answers. Therefore, Dr. Jaiswal asked Bhavesh to lodge the report. On enquiry by the police, Amol disclosed that he purchased the Remdesivir injection from the appellants Aniket and Abhilash. It was also revealed that the said injection was supplied by original accused No.3 Sumit. On enquiry, the other co-accused, who were indulged in supply of Remdesivir at higher rate were arrested and prosecuted. All the accused were tried and held guilty, but applicants were convicted

under Section 420 read with Section 34 of the Indian Penal Code only. It is contended that since the arrest the applicants are in jail.

5. It is submitted on behalf of the applicants that the applicants were not involved in supply of drug. Similarly, they had not sold the drug to the son of Amol. Their roles are difference than the co-accused. It is contended that there are many omissions and contradictions in the evidence of witnesses. The Investigating Officer has candidly admitted that he has not taken steps for sealing of drugs. Similarly, there is evidence on record to show that the samples which were sent to analysis were not having the crime no., name of Police Station as well as the batch no.. It is also bought on record that the Chemical Lab had received the several samples from all over Maharashtra. Therefore, there is doubt whether the seized injection was spurious. Thus, the applicants are acquitted for the offence punishable under the The Drugs and Cosmetics Act, 1940.

6. It is contended that the appeal may not be heard within short time. The applicants may be released on bail.

7. On the other hands, the learned Additional Public Prosecutor submits that the applicants were involved in circulation of Remdesivir injections. They sold the said injections at higher price. He also submits that the Covid-19 is still in existence. The third wave has also came. Therefore, there is possibility that applicants may indulge in similar

activity if released on bail. Hence, he submits that by giving priority, this appeal can be heard. Hence, he has strongly objected for suspension of sentence and granting bail to applicants.

8. Heard learned counsel for the applicants and learned Additional Public Prosecutor. Perused the judgment. The learned counsel for the applicants took me through the evidence of informant, the son of patient Amol, the Medical Officer and the Investigating Officer. It appears that there are many omissions in the evidence of Amol. The said omissions are proved by the defence. It appears from the evidence that son of patient Amol (PW-3) obtained injection from applicants. It is also the case of prosecution that applicant Sumit had supplied injection to accused Nos.1 and 2. It is also the case of the prosecution that accused No.4 was serving as a nurse. She took the injection from the hospital and gave it to her husband, who has supplied the injection to the accused Sumit. The Trial Court has acquitted the accused No.4 – Rani.

9. The Investigating Officer had admitted that there are no batch number on injection and the name of companies, also not mentioned in the panchnama. The injections were sent at belated stage to C.A.. C. A. has admitted that he received sample without batch no., expiry date and name of manufacturer. Therefore, it appears that there is an ambiguity in the evidence to connect the seized injection and the report of C.A.. The evidence of prosecution

is required to be reappreciated in this appeal. As I already observed that there are omissions and contradictions in the evidence of informant and other witnesses. The appeal may not be heard within short period. Therefore, in my considered view, the applicants are entitled for bail during the pendency of the appeal.

10. The Additional Public Prosecutor has expressed that the applicants may indulge in the activity of supplying injections again. He also submits that the third wave of Covid-19 has started. Therefore, there is possibility of repetition of incident by the applicants.

11. On the other hands, the learned counsel for the applicants submits that if the applicants are put to condition they may not indulge in the illegal activity again. The applicants will attend the hearing of this appeal regularly. We can prevent the applicants for indulging in supplying of injections again.

12. In view of the above submissions, if the stringent conditions are put to the applicants, they may not indulge in the activity of supply of injections to needy people. With this, I pass the following order.

ORDER

- i. The application is allowed.
- ii. The sentence imposed upon the applicants are hereby suspended till final hearing of this appeal.

iii. The applicants Aniket S/o. Moreshwar Nandeshwar, Abhilash S/o. Devraoji Petkar and Sumit S/o. Sukhdevrao Manohare are ordered to be released on bail on his executing a P.R. Bond in the sum of Rs.15,000/- with a solvent surety in the like amount.

iv. The applicants shall not to indulge in supply of drugs of any sort to any person.

v. The applicants are directed to attend concerned Police Station on 10th of every month between 10.00 a.m. to 12.p.m. till September 2022.

(SURENDRA P. TAVADE, J.)

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