

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2558 OF 2023 IN APPEAL/628/2023

KASHINATH BALI @ GOVIND CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. V. D. Gunale
APP for Respondent/State : Ms. V. N. Patil Jadhav
...

CORAM : S. G. MEHARE, J.

DATE : 02-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant is seeking suspension of sentence imposed upon him to suffer rigorous imprisonment for five years for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "N.D.P.S. Act") by the learned Additional Sessions Judge and Special Judge, Latur, in Special (NDPS) Case No.3 of 2016, dated 05.07.2023.
3. The learned counsel for the applicant would submit that it is a short-term conviction of five years. The fine amount has been deposited. The re-appreciation of evidence is essential being a first appeal against the conviction. The applicant was on bail during the trial.
4. The learned A.P.P. would submit that the applicant has been convicted for the serious offence under the N.D.P.S.Act. The huge

quantity of ganja was recovered from him. Considering the gravity of the offence, the sentence may not be suspended.

5. The law is well settled that the normal rule is to suspend the sentence during the pendency of the appeal unless there are exceptional circumstances. The applicant has been tried for the offence punishable under N.D.P.S. Act and has been convicted for the term of five years. Considering the role of the applicant and the sentence imposed against him and absence of exceptional circumstances, the Court is of the view that this is a fit case to exercise discretion under Section 389 of the Code of Criminal Procedure. Hence, the order:-

- i) The application is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant, in Special (NDPS) Case No.3 of 2016, dated 05.07.2023, by the learned Additional Sessions Judge and Special Court, Latur, to suffer rigorous imprisonment for five years for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act, 1985, is suspended till conclusion of the appeal.
- iii) Applicant Kashinath Bali @ Govind Chavan be released on bail on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety of like amount, on an undertaking that he shall provide his cell number and permanent residential address proof to the concerned Police Station.
- iv) Bail before the learned Additional Sessions Judge and Special Court, Latur.

(S. G. MEHARE, J.)