

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 254 OF 2023
IN CRIMINAL APPEAL NO. 966 OF 2022

Somnath Shivaji Jadhav,
Age : 24 years, Occ. : Labour,
R/o. : Malegaon Tanda, Tq. Aurad,
Dist. Bidar (Karnataka)

... Applicant
(Ori. Accused)

VERSUS

The State of Maharashtra

... Respondent

AND
CRIMINAL APPLICATION NO. 3182 OF 2023
IN CRIMINAL APPEAL NO. 966 OF 2022

Rahul Nilkanth Pawar,
Age : 26 years, Occ. : Labour,
R/o. : Malegaon Tanda, Tq. Aurad,
Dist. Bidar (Karnataka)

... Applicant
(Ori. Accused)

VERSUS

The State of Maharashtra

... Respondent

AND
CRIMINAL APPLICATION NO. 3183 OF 2023
IN CRIMINAL APPEAL NO. 966 OF 2022

Satish Raghunath Jadhav,
Age : 24 years, Occ. : Labour,
R/o. : Malegaon Tanda, Tq. Aurad,
Dist. Bidar (Karnataka)

... Applicant
(Ori. Accused)

VERSUS

The State of Maharashtra

... Respondent

...

Mr. Satej S. Jadhav – Advocate for respective Applicants
Mr. P.M. Kulkarni – APP for Respondent, State

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 8th September, 2023

ORDER :

1. All these applications are filed by the respective applicants who are original accused in Special Case (N.D.P.S.) No.1 of 2021. They are seeking suspension of their respective substantive sentence of imprisonment recorded by the learned Special Judge, Udgir, Dist. Latur (hereinafter referred to as "*learned Trial Court*") in the said case under judgment and order dated 23rd November, 2022 during the pendency of this appeal.

2. Learned Counsel for the applicants – accused submits that, the accused are convicted under Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as "*N.D.P.S. Act*") and sentenced to suffer imprisonment for ten years. According to him, since the trial before the learned Trial Court completed within two years, the applicants had not preferred any bail application. However, he submits that the learned Trial Court while convicting present applicants has ignored so many material aspects. According to him, it was case of police that, in all

176 Kilograms Ganja was seized from these applicants but the person who weighed the same is saying only 90 Kilograms. He pointed out that, there was clear contravention of mandate of Section 50 of the N.D.P.S. Act and, therefore, the conviction appears illegal. In support of his submissions, he relied upon following judgments :

- (a) *Hon'ble Supreme Court in the case of Mangilal Vs. The State of Madhya Pradesh* reported in **2023 LiveLaw (SC) 549**
- (b) *Hon'ble Supreme Court in the case of Simarnjit Singh Vs. State of Punjab* in **Criminal Appeal No. 1443 of 2023** (arising out of S.L.P.(Crl.) No. 1958 of 2023)
- (c) *High Court of Bombay in the case of Santosh Pandurang Parte Vs. Amar Bahadur Maurya and Anr., in Bail Application No. 4125 of 2021*

3. On the contrary, learned A.P.P. strongly opposed the applications mainly on the ground that, the applicants – accused were found with Ganja in vehicle, which was in their possession. He pointed out that, the prosecution has examined eight witnesses and all those supported the case of prosecution and, therefore, guilt of accused is established beyond all reasonable doubts. Learned A.P.P. further submits that, all accused were under trial and therefore there is no reason to release them on bail by suspending their substantive sentence of imprisonment.

4. Heard rival submissions and also perused the documents on record. It is not disputed that, the applicants were under trial prisoners. It is significant to note that, the learned Counsel for the applicants is seeking suspension of the sentence of imprisonment of the applicants and they are released on bail during the pendency of this appeal on the ground that, there was no proper compliance of the stringent provisions under the N.D.P.S. Act. However, the same argument was done before the learned Trial Court on behalf of these applicants – accused, but the learned Trial Court by quoting those provisions has observed that there was no breach as such in respect of provisions of N.D.P.S. Act at the hands of investigating machinery. Be that as it may, it is not disputed that the applicants were under trial prisoners. Moreover, the paperbook is also ready and, therefore, instead of considering these applications of the applicants, main appeal can be heard expeditiously. In view of the same, following order is passed :

ORDER

- i. All these applications are rejected at this juncture.
- ii. The hearing of appeal is expedited.

[SANDIPKUMAR C. MORE, J.]