



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.4298 OF 2023
IN REVNST/12109/2023**

1. Laxmikant S/o Damodhar Devshetwar,
Age: 58 years, Occu. Business,
Registered Pharmacist, Qualified Person
Of M/s Sadanand Medical and General Stores,
House No. 677/1/36, Ward No. 14,
Near Sonali Hospital, Shivram Nagar,
Basmath Road, Parbhani District – Parbhani.
(At present in Jail)
2. Indumati Damodhar Devshetwar,
Age : 90 years, Oecu. Nil,
Proprietor of M/s Sadanand Medical and General Stores,
House No. 677/1/36, Ward No.14,
Near Sonali Hospital, Shivram Nagar,
Basmath Road, Parbhani, District – Parbhani ..Applicants

Versus

The State of Maharashtra,
Through Drug Inspector, Parbhani
Food Drug Administration,
M.S. Jarnnotri Building,
Rani Laxmibai Road,
Parbhani

..Respondent

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Mr. Swapnil S. Rathi, Advocate for the Applicants.
Mr. S. A. Gaikwad, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 30th NOVEMBER, 2023.**

PER COURT:-

1. Heard the learned Advocate appearing for the respective parties.
2. Mr. Rathi, learned Advocate appearing for the applicants submits that the applicants were prosecuted in RCC No.28/2002 for the offences punishable under Sections 18-A, 18 (e) R/w Rule 65 (17) and 65 (18), 18 (a) (i) R/w Section 17, Rule 95 &

96, 18 (a) (vi) R/w Rule 104-A, 18-B, 22 (1) (cca) of Drugs and Cosmetic Act, 1940 and Rules 1945 which are punishable under Sections 28-A, 27 (d), 22 (3) of the said Act. The learned Magistrate upon trial pleased to convict the applicants for the offence punishable under Section 27(d) and sentenced to suffer imprisonment for two months in respect of applicant no.1 and sentenced to suffer imprisonment till rising of the Court in respect of applicant no.2. He would submit that the applicants have deposited the fine amount.

3. Mr. Rathi, would further submit that the order of conviction and sentence passed by the Chief Judicial Magistrate, Parbhani in RCC No.28/2002 was subjected to challenge before the Appellate Court in Criminal Appeal No. 74/2012. However, Appellate Court dismissed the appeal vide judgment and order dated 01.08.2023. He would submit that both the Courts below failed to consider defence raised by the applicants and the provisions relating to the various infractions stipulated under Drugs and Cosmetic Act, 1940 and Rules 1945 and accordingly sentenced applicants. He would, therefore, urge that there are reasonable grounds requiring consideration in present Revisions Application. For that purpose, Record and Proceeding is required to be gone into.

4. The learned APP however opposes the prayer for grant of bail on the ground that both the Courts below have concurrently finds the applicants guilty of violation of the provisions of Drugs and Cosmetic Act, 1940 and Rules 1945 and accordingly sentenced the applicants.

5. Having considered submissions advanced and after going through the reasoning adopted by the Courts below, it can

be observed that there are arguable grounds which require consideration after calling record and proceedings. Apparently, the applicants were on bail during the pendency of the trial, so also during the pendency of the Appeal before the Sessions Court. In that view of the matter, the case is made out to release the applicant no.1 on bail till further hearing of the Revision Application. Hence, the following order:

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending hearing and final disposal of the Revision Application, the substantive sentence imposed by the Chief Judicial Magistrate at Parbhani in RCC No. 28/2002 dated 24.07.2012 and confirmed by the learned Additional Sessions Judge at Parbhani in Criminal Appeal No. 74/2012 dated 01.08.2023 is hereby suspended till further orders.
- (iii) Meanwhile, the applicant no.1, Laxmikant S/o Damodhar Devshetwar, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each with one solvent surety of the like amount.
- (iv) Bail before the Trial Court.
- (v) The Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE