



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2351 OF 2022
IN
CRIMINAL APPEAL NO.644 OF 2019

Abdul Karim Noor Mohd. Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

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Ms. Zehra Charania, for Applicant.

Mr. A.R. Patil, APP, for Respondent State.

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CORAM : NITIN B. SURYAWANSHI, J.

DATED : 7th NOVEMBER 2023

P. C. :

This is an application for suspension of sentence and grant of bail during the pendency of criminal appeal preferred by Applicant challenging the judgment and conviction.

2. Applicant is convicted by Additional Sessions Judge, Greater Bombay in NDPS Case No.220 of 2016 under Section 235(2) of the Code of Criminal Procedure and under Section 8(c) read with 22(c) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and thereby sentenced to suffer rigorous imprisonment for 10 (ten) years and to pay fine of Rs.1,00,000/- in default in payment of fine to undergo rigorous imprisonment for one year.

3. Heard learned Counsel for Appellant/Applicant and learned APP for Respondent-State.

4. Learned Advocate for Applicant submits that there is non-compliance of Section 52A of the NDPS Act and, on that ground, Applicant is entitled for acquittal. In support of the said application, she relies on a decision of the Apex Court in **Yusuf @ Asif vs. State** in Criminal Appeal No.3191 of 2023 arising out of SLP (Cri.) No.3010 of 2023. She further submits that out of substantive sentence of 10 years as imposed on Applicant, Applicant has already completed 7 years and 10 months of imprisonment. She, therefore, prays for suspension of substantive sentence of Applicant.

5. Learned APP, on the other hand, vehemently opposed the prayer. He stated that the offence is proved and the trial court has rightly convicted Applicant. Learned APP submits that evidence cannot be appreciated at this stage and, therefore, the application deserves to be dismissed.

6. Prima facie there appears substance in the contention of Applicant that there is non-compliance of Section 52A in the present matter. Learned Advocate for Applicant is justified in relying on the decision of **Yusuf @ Asif** (supra). Taking into consideration the fact that out of 10 years imprisonment, Applicant has already undergone 7 years 3 months imprisonment and appeal of the Applicant is not likely

to be heard in near future and considering the pendency of jail appeals, application deserves to be allowed. Hence, following order:

- (i) Interim application is allowed.
- (ii) Substantive sentence of imprisonment imposed vide judgment and order dated 19th January 2019 in NDPS Case No.220 of 2016 arising out of C.R.No.81 of 2016 registered with the ANC, Azad Maidan is suspended during the pendency of the appeal.
- (iii) Applicant- Abdul Karim Noor Mohd. Shaikh be released on bail on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount.
- (iv) Applicant shall attend the concerned police station twice a month on first and third Sunday between 10.00 a.m. to 12.00 p.m..
- (v) Applicant shall furnish his permanent address as well as present address and Cell number/s to the concerned police station.

[NITIN B. SURYAWANSHI, J.]