

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3359 OF 2022
IN
CRIMINAL APPEAL NO. 823 OF 2022

Iliyas Mehmood Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Sherali S. Khan for the applicant.
Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 15th MARCH 2023

P.C:-

1 The Appeal being admitted, the appellant who was tried as accused no.6 in Sessions Case No.5/2013 seek suspension of sentence and his release on bail.

2 The Special Judge, Nashik awarded judgment dated 15/7/2022, has found the applicant guilty of Section 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') along with accused nos.2 and accused no.6 and he has been sentenced to suffer RI for 10 years and pay fine of Rs.One lakh, in default to suffer RI for one year each.

3 The applicant seek suspension of sentence on the ground that the Special Judge did not appreciate the evidence in its proper perspective and there is every chance of his being acquitted and further on the ground that throughout the trial, the applicant was on bail.

4 I have heard the learned counsel for the applicant and perused the impugned judgment along with notes of evidence placed on record, which has been appreciated in the impugned judgment.

 The case of the prosecution which could clearly surface to the impugned judgment, is to the effect that secret information was received by PW 1, PI of Crime Branch, while on patrolling duty, that one Nazir AhmAd and his companions are coming to Nashik in Pajero vehicle from Nepal with *charas*. Based on the said information, a trap was laid and accordingly, two vehicles; one Pajero vehicle as informed and another Tavera vehicle was trapped. Total five persons were found to be occupying Pajero vehicle from which an incriminating substance, which was found to be contraband, came to be seized. The quantity of measuring was found to be 6 kg 900 gms. On samples being drawn, it was found to be '*charas*'.

 On personal search of the apprehended persons, various documents were seized, but nothing incriminating was recovered. The charge was framed u/s.20B, 20C read with

Section 34 of IPC against six accused persons who pleaded not guilty and were therefore tried. The prosecution examined five witnesses which included PW 1, the PI attached to Crime Branch who deposed and proved the panchnama as well as the seizure.

5 The evidence of PW 1 is very specific and he has referred to the presence of five persons in the Pajero and a search being taken of the vehicle, which led to recovery of charas, weighing 6 kg 900 gms. The cross-examination of PW 1 is on the point of the procedural lacunae in transmitting the information which was received on the basis of which, the trap was laid.

6 To corroborate the case of the prosecution, another witness Mr.Amol Rikame, a panch witness is also examined and he confirm the search of the vehicle and the search of the accused persons in person. Extensive cross-examination of the said witness did not create any dent in the case of the prosecution, as regards the recovery of the contraband in the vehicle in which the applicant was found and apprehended.

PW 3, the Police Head Constable attached to CBI, Unit No.3, who was part of the raiding team also supported the case of the prosecution and through these witnesses, the case of the prosecution was conclusively established.

7 Appreciating the evidence brought on record through the aforesaid witnesses, the Special Court recorded that the

accused no.2, accused no.5 and accused no.6 were travelling with *charas* weighing 6 kg 900 gms, on the date when they were apprehended and no explanation came from them, rebutting the presumption of conscious possession. Recording that the evidence of the prosecution do not suffer from any material contradictions, the learned Judge held him guilty of Section 20C and imposed the sentence vide the impugned judgment.

8 The learned counsel would rely upon the decision of this Court in case of *Premnarayan Prabhulal Mina & Anr Vs. State of Maharashtra, 2008 All M.R (Cri). 599*, to fortify his submission that mere fact that the contraband was found in the vehicle by itself, would not show that the accused were the actual possessors of the bundles.

9. The impugned judgment, when carefully perused, the learned Judge has specifically recorded that no attempt was made on part of the accused persons, including the applicant, to rebut the lawful presumption in respect of illegal *charas* seized from the Pajero and did not offer any satisfactory explanation about the presence of the contraband in the vehicle in which they were travelling. The conscious possession of the contraband article was conclusively proved by the prosecution and hence, the presumption u/s.54, unless rebutted have been correctly accepted and appreciated.

9 In the wake of the decision of the Special Court, convicting the applicant for the offence punishable u/s.20C read with Section 34 IPC, I do not think that the case is made out for suspension of sentence, wherein the parameters are distinct from the one to be considered while an application is entertained for grant of bail, particularly, when the judgment has fortified the guilt and ultimately it is for the Appellate Court to appreciate the contentions raised in the Appeal, which include the finding of perversity, which, in my *prima facie* opinion, is not made out.

Interim Application is rejected.

(SMT. BHARATI DANGRE, J.)