

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 217/2023 IN
CRIMINAL APPEAL NO. 111/2023

Komallu Shanthram Gughlot and anr. vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. P. Joshi with Mr. S. M. Puranik, Advocates for applicant.
Mr. S. S. Doifode, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 16, 2023.

Heard.

2. This is an application under Section 389 of the Criminal Procedure Code, 1973. The applicant has been convicted by the learned Additional Sessions Judge, Chandrapur by judgment and order dated 20.01.2023 in Special (NDSP) Case No.8/2019, for the offences punishable under Section 20(b)(II) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). The maximum punishment awarded is Ten years and fine.

3. The suspension of sentence is sought, inter alia, on the ground that the samples taken by the investigating officer are not in consonance with the provisions of the NDPS Act.

4. I have, with the able assistance of the learned counsel for the parties, gone through the evidence that relates to the collection of samples. PW1 is Police Sub Inspector. He is the one

who has conducted the raid. His evidence indicates that these two applicants were, at the relevant time, carrying with them contraband – Ganja in twenty three pockets. Eight plastic pockets wrapped in stickpaper were found in the possession of applicant no.1. Eleven plastic pockets in one bag and four pockets in another bag wrapped with stickpaper were found in the possession of the applicant no.2. These pockets were weighted. The net weight of the contraband was found to be 60 kg. These contrabands were recovered from three bags. The seizure panchanama was drawn (Exh.-28). It indicates that the contrabands from pockets were mixed together and thereafter two samples of 100 gms. each were separated for sampling.

5. Learned counsel for applicants has rightly argued, at least for the purpose of suspension of sentence, that mixing of contraband is not permitted. He relied upon the judgment of this Court in Satnamsingh Gurudayal Singh Sod Vs. State of Maharashtra; reported in 2011 ALL MR (Cri) 2986. In paragraph 40, the coordinate bench has held thus:

“40. Moreover, it is also significant to note that it has not come in evidence that the quantity of sample was collected from each of the packets of the contrabands, and therefore, apparently, the sampling itself appears to be faulty and hence, such faulty sampling and consequent C.A. report thereof cannot be basis of conviction against the accused, and hence, the accused is entitled for acquittal.”

6. Considering the above lapses so also the fact that the applicants are in jail for more than 3 ½ years and further that it is unlikely that the appeal will be taken up for final hearing in

near future, the applicants have made out a case for suspension of sentence.

7. Learned APP for the State submits that the applicants are residents of Telangana State. If released on bail, it will be difficult to secure their presence. This apprehension of the prosecution can be dealt with by putting the applicants to appropriate terms.

8. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) Pending appeal, the execution of sentence imposed upon the applicants by judgment and order dated 20.01.2023, passed by learned Additional Sessions Judge, Chandrapur in Special (NDSP) Case No.8/2019, for the offences punishable under Sections 20(b)(II)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is hereby suspended.

(iii) Applicant no.1 – Komallu Shanthram Gughlot and applicant no.2 – Biccha Kotayya Balot, be released on bail on they furnishing furnish P.R. bond in the sum of Rs.50,000/- each with one or two sureties each in the like amount before the lower Court.

(iv) The applicants shall attend Police Station, Ramnagar, Chandrapur on first Sunday of every alternate month.

(v) The applicants shall, at the time of execution of bond, furnish their addresses and telephone/mobile number(s) to the police station and shall not change the same till the final disposal of the appeal.

(vi) The applicants shall surrender their Passports, if any, before the Court concerned within a period of one week from today. If they do not possess any passport, they shall file an affidavit to that effect.

(vii) The applicants shall not commit similar such offences. If committed, the same shall be viewed seriously.

(viii) The applicants shall remain present before this Court at the time of final hearing of the appeal.

The application is disposed of.

Registry to process the appeal for final hearing as per the rules.

(Anil L. Pansare, J.)

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