

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPEAL NO. 209/2023

Sindhu wd/o Dhanraj Walke

.. Appellant

versus

The State of Maharashtra

Th.PSO PS Kalamna, Nagpur.

.. Respondent/s

.....
None for the appellant

Mr. M.J. Khan, APP for Respondent -State

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CORAM: ANIL L. PANSARE, J.

DATED : 5th April, 2023.

PC:

This is an appeal under Section 449(ii) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). The appellant is aggrieved by the order dated 14th March 2023 passed by the learned Sessions Court, Nagpur in Special NDPS Case No.108/2018, directing the appellant to deposit Rs. 1 lakh, as per her undertaking.

2. The charge sheet has been filed for the offence punishable under section 20(b) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, on the count that the accused possessed ganja having 64 kg. 866 grams. It appears that the accused no.2 was released on bail and the appellant stood surety for Rs. 1 lakh.

3. The accused No.2 did not attend the Court. The appellant states that the accused got married to another lady and went to reside in naxalite area and is not traceable. The trial court therefore issued notice to the appellant. She appeared before the Court. She made efforts to

trace the accused no.2 but in vain. On the application filed by the appellant under section 446(3) of the Code, the following order was passed:-

“ Considering nature of the offence and seriousness of crime the surety shall deposit Rs. One lakh as per her undertaking else she shall face consequences as per law. Learned Advocate for surety relied on judgment of Supreme Court in 1999 (4) Crimes 320 (SC), but in this case of drug trafficking this Court can not use discretion.”

4. The ground put forth by the appellant before the Sessions court so also this court is that she is a widow having minor children and that she is poor.

5. The learned counsel for the applicant was absent on previous date. He is absent today as well. It appears that he is not interested in prosecuting the appeal.

6. The learned APP has rightly submitted that the trial Court has not committed any error in passing the impugned order, inasmuch as the appellant on her own volition stood surety and undertook to deposit the amount if she fails to produce the accused no.2 before the court. The above order is passed in terms of the undertaking given by the appellant.

7. I do not find any reason to upset the said order particularly when the counsel for the appellant did not think it necessary to assist the court in this regard. The appeal is accordingly dismissed.

8. Copy of this order be served upon the concerned Sessions Court for further action.

[ANIL L. PANSARE, J.]

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