

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

CRIMINAL APPLICATION (APPA) NO.399 OF 2023

IN
CRIMINAL APPEAL NO.238 OF 2023

Dhanesh Puri Guru Prem Puri

Vs.

State of Maharashtra, Through Police Station Inspector, Railway Police Station,
Nagpur

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

Court's or Judge's orders

Mr. Naman Bhangde, Advocate h/f Mr. A. K. Bhangde, Advocate for appellant.
Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/07/2023

1. The present application is for suspension of sentence under Section 389 of the Code of Criminal Procedure and for releasing the appellant on bail.

2. The appellant was prosecuted for the offence punishable under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act (NDPS Act). After appreciation of the evidence, the learned trial Court held that the appellant was guilty for the offence punishable under Section 20(b) of the NDPS Act and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.25,000/-, in default of payment of fine to suffer simple imprisonment of three months.

3. The appellant has challenged the Judgment and Order of sentence on various grounds including that the learned trial Court has not considered the evidence in proper perspective. There was no compliance of mandatory provisions under Section 52-A of the NDPS Act, but the learned trial Court has ignored the same and convicted the applicant. The appellant has every chance of success in the present appeal, however, the appeal will take its own time. In the meanwhile, if the sentence is executed, the purpose of preferring the appeal would be frustrated.

4. The said application is strongly opposed by the State on the ground that learned trial Court has rightly appreciated the evidence and no ground is made out for suspension of sentence.

5. After hearing the learned Counsel for the appellant and the learned APP for the State, perused the grounds of the appeal and the impugned Judgment. The appellant has made out the arguable point that the mandatory provisions are not followed by the Investigating Officer and learned trial Court has ignored the same. Admittedly, the appeal will take its own time for its final decision. In the meanwhile, if the sentence is executed, no purpose will be served by preferring this appeal. In view of that, the application for suspension of sentence deserves to be allowed by imposing certain

conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) Criminal Application is allowed.
- (ii) The execution of the sentence is suspended till disposal of the appeal.
- (iii) The appellant **Dhanesh Puri Guru Prem Puri** is released on bail on executing PR bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iv) The conviction is suspended on condition that appellant shall deposit the amount of fine of Rs.25,000/- within one month.
- (v) The appellant shall put his presence before the trial Court, till disposal of the appeal on 1st date of every month and the trial Court shall record his presence.
- (vi) The appellant shall furnish his cell phone number and address with the address proof. The appellant additionally shall furnish the names of his two relatives with their address proof.

The application is is disposed of.

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- 1. **Admit.**
- 2. The learned APP Mr. Kadukar, waives notice for respondent/State.

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3. Call for record and proceedings.
4. The appeal be placed before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

Sarkate