

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

CRIMINAL APPLICATION (APPA) NO.1149/2022 & 2/2023 IN
Criminal Appeal No.883/2022

Mrunal s/o Mayur Gajbhiye

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.S.P. Bhandarkar, Advocate along with Mr. Ganesh B. Mate, Advocate for applicant.
Mr. I.J. Damle, APP for State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/06/2023

1. Present applications are filed by the appellant/applicant for suspension of sentence and for releasing him on bail.

2. The appellant was prosecuted for commission of offence punishable under Section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act of 1985"). After recording evidence, the trial Court held him guilty and convicted for offence punishable under Sections 21(b) of the Act of 1985 and sentenced to suffer rigorous imprisonment for a period of five years and to pay fine of Rs. 25,000/- in default of payment of fine, to undergo simple imprisonment for period of three months.

3. Being aggrieved and dissatisfied with the judgment, present appeal is filed on the ground that the learned trial Court has not appreciated evidence properly and not considered that the mandatory provisions had not followed by the Investigating Officer during the investigation. Further ground raised by the appellant is that he was arrested merely on suspicion and, therefore, he be released on bail. During the trial, the appellant was on bail and he has not misused the liberty. As per the contention of the appellant, now he is in jail since more than two years and half of the sentence he had undergone. He is having chance of success in the present appeal and, therefore, he be released on bail by suspending his sentence.

4. The said application is strongly opposed by the State, on the ground that the present appellant is habitual offender and approximately 16 offences are registered against the present appellant and if he is released on bail, there is every possibility that he would be involved in similar types of offence.

5. Heard learned counsel Shri Bhandarkar for the appellant/applicant. He submitted that half of the sentence by the appellant has already undergone and placed his reliance upon *Dadu alias Tulshidar Vs. State of Maharashtra* reported in (2000) 8 SCC 437, wherein the issue regarding constitutional validity of Section 32-A

of the Act of 1985, was referred to the Hon'ble Apex Court. The Apex Court, while considering constitutional validity of Section 32-A of the Act of 1985, said provision is unconstitutional to the extent that it takes away the right of the Courts to suspend the sentence of a person, who are convicted under the Act. The Apex Court, however, held that right under Section 37 would be required to be considered while suspending the sentence. It is submitted that in accordance with Section 37 of the Act of 1985, the conditions stipulated therein as restriction for suspending the sentence by imprisonment. Section 37 of the Act of 1985, stipulates that no person of an offence punishable for offence under Section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and when the Public Prosecutor opposed the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

6. Undisputedly, present appellant has been convicted of the offence punishable under Section 8(c) which is punishable under Section 21 (b) of the Act of 1985.

7. In view of Section 37 (1) of the Act of 1985, no person of an accused punishable for offence punishable under Section 19, or section 24 or section 27-A of the Act of 1985 and also for offences involving commercial quantity shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and when the Public Prosecutor opposed the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. Admittedly, present appellant is not prosecuted for offences punishable under Section 19 or section 24 or 27-A of the Act of 1984. The quantity is not commercial nature and therefore, bar under Section 37 is not applicable in the present case. Considering half of the sentence by the appellant has undergone and there is no possibility that appeal would be decided in near future. Considering the same, both applications deserve to be allowed. Accordingly, I proceed to pass following order:

(i) Criminal Application Nos.1149/2022 and 2/2023 are allowed.

(ii) Execution of sentence be suspended till disposal of the appeal.

(iii) The appellant is hereby released on bail on his executing PR bond in the sum of Rs.50,000/- (Rs.Fifty thousand) with one surety in the like amount.

(iv) During pendency of the appeal, the appellant shall attend the trial Court on 5th of every month and trial Court shall record his presence.

(v) The appellant shall furnish his mobile/phone number, along with his address proof, before the trial Court. Additionally, the appellant shall submit the names of his nearest relatives along with their addressed with address proof.

(vi) The appellant shall not involve in similar offence during pendency of the appeal.

(URMILA JOSHI-PHALKE, J.)