

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1345 of 2024
IN
CRIMINAL APPEAL NO. 823 OF 2022

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

Mr.Sherali S. Khan for the applicant.
Smt. Mahalakshmi Ganpathy, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 6th MAY, 2024

P.C:-

1 For the second time, Interim Application is moved in the pending Appeal, challenging the judgment of conviction in Sessions Case No.5/2013, and the applicant Iliyas Mehmood Shaikh, who was refused his relief on 15/3/2023, claim parity with other co-accused.

2 When I had specifically raised a query as to whether the second Bail Application in a pending Appeal would lie, the learned counsel has relied upon the decision of the Allahabad High Court in case of *Dal Chand and ors Vs. State of U.P.*¹.

1 2000 Cri.L.J. 4579

The said decision is based upon the decision of the Apex Court in case of *Babu Singh Vs. State of U.P.*², which has held that it cannot be said that the second Bail Application by way of interlocutory relief, is not maintainable, but at the same time, the Apex Court also emphasized the factors which have to be kept in mind while granting bail to an accused and in paragraph no.13, what is observed, is relevant to note:

“13 Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence. If such is plausible into the case. As Erla, J, indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting that no amount of bail would secure the presence of the convict at the stage of judgment, should lie be enlarged.”

3 It being a settled position of law that repeated applications for bail cannot be entertained, and it is only in the wake of the changed circumstances; one of it may be delay in hearing of the Appeal, the application can be renewed. However, before me, what the learned counsel has pressed into service are two orders passed in case of co-accused; and they being passed subsequent to the relief being refused to him, this is being sought to be construed as change in circumstance, and I totally disagree

2 1978 (1) SCC 579

with the submission of the learned counsel, for the reasons recorded in the subsequent paragraph.

4 On 15/3/2023, while considering the application for suspension of sentence filed in the pending Appeal, he having been convicted and found guilty of Section 20(c) of the NDPS Act, 1985 and being sentenced to suffer RI for 10 years and to pay fine of Rupees One lakh, on considering the case of the prosecution, which has clearly surfaced through its witnesses, and based on the evidence, the learned Sessions Judge had recorded the guilt of the accused persons, including the present appellant/applicant, I had referred to the evidence on the basis of which the finding was rendered, resulting into imposition of sentence.

5 The prosecution had proved beyond reasonable doubt that five persons were travelling in a Pajero vehicle, which started from Nepal with the contraband, and when the trap was laid, on the information received, they were found in the vehicle along with the incriminating substance, and their search laid to a seizure of 6 kg 900 gms of contraband, which, on testing, was found to be *charas*.

Since the evidence led before the Sessions Judge was clinching and pointing out towards the accused, including the applicant - Iliyas Mehmood Shaikh, I clearly recorded that the case of the prosecution do not suffer from any material

contradictions and the finding of guilt recorded against the present applicant, was supported by cogent and reliable evidence.

The argument that the contraband was found in the vehicle and not in conscious possession, was also rejected by me by recording reasons in the said order.

6 Co-accused Chandrashekhar Sherekar filed an Interim Application No.1059/2023 in the Appeal, being aggrieved by the very same judgment, and in the backdrop of the argument that he was resident of Nasik and he knew the main accused and therefore, he carried his vehicle to Indore and towed the vehicle of the accused from Indore to Nasik, where the vehicle of the accused was intercepted and contraband was seized, the argument advanced was, “except this, the applicant has no other involvement in the alleged offence.”

The learned Judge, merely on the ground that there are no criminal antecedents and prima facie, there appears to be substance in the contention of the applicant, and he was not involved in the alleged offence, because he was towing the vehicle, when the vehicle of the accused was raided, released him on bail.

Drawing parity, another co-accused Nikhil Alias Sunny Suresh Gaikwad, was also released on bail on 13/3/2024, following the same analogy.

7 As far as the present applicant/appellant is concerned, the prosecution has very much established that he was present in the pajerao vehicle from where the contraband of commercial quantity was recovered and rightly appreciating the evidence placed on record, the Sessions Judge found him guilty u/s.20C of the NDPS Act, 1985 and convicted him.

8 Once there is a finding by a competent Court by appreciating the evidence placed on record by the prosecution, unless and until there is something convincing to establish that the finding is perverse, I do not think that the case is made out for releasing such an accused on bail.

In the present case, on distinguishing the observation of the learned Judge in cases of one of the accused and the other claiming parity with the first one, this definitely cannot be considered as change in circumstance, as has been highlighted in case of Babu Singh (supra).

Application is therefore, rejected.

(SMT. BHARATI DANGRE, J.)