

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3887 OF 2023

Sachinam Changya Guruswamy

...Petitioner

Versus

State Of Maharashtra

...Respondent

Mr. Ayaz Khan a/w Ms. Zehra Charania Advocate for Petitioner.

Mrs. M. M. Deshmukh, APP for Respondent-State.

PSI Pawale, ANC Azad Maidan Unit is present.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 5th APRIL 2024

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P.C.:-

1. The petitioner is seeking quashing the FIR registered with Anti Narcotic Cell, Mumbai Vide C.R. No. 87 of 2005 for offences under Sections 8(c) read with 21, 29 of the N.D.P.S. Act.

2. The petitioner has contended that, he was arrested on 22nd August 2022 in C.R. No. 126 of 2006 registered with Anti Narcotic Cell, Worli Unit, DCB, CID, Unit-11 at Kandivali, Mumbai. In the said case, the petitioner was discharged by the Sessions Court. It is submitted that, the petitioner was alleged to be involved in several other cases but for want of evidence most of the proceedings were quashed by this Court. In the present case, co-accused were tried for aforesaid offences and vide judgment and order dated 14th July 2006, they were acquitted. There is no evidence against the

petitioner in the present crime. He was never sought to be arrested. The petitioner had preferred Criminal Writ Petition No. 1258 of 2023 before this Court challenging the proceedings in C.R. No.209 of 2007. The said petition was allowed by this Court vide judgment dated 10th April 2023 and the proceedings were quashed for lack of evidence.

3. Learned APP submitted that co-accused were arrested and they were tried. The petitioner was not available. He could not be arrested and charge-sheeted. The involvement of the petitioner is based on statement of co-accused. Case of the prosecution is that the co-accused were found in possession of the contraband and the same was handed over to them by the petitioner.

4. Except statement of the co-accused as stated above, the prosecution does not have any incriminating circumstances against petitioner to show his involvement in the crime. It is pertinent to note that, co-accused, who were allegedly found in possession of contraband were tried before the Special Judge under the NDPS Act and vide Judgment and order dated 14th July 2006, they were acquitted. In paragraph 16 of the said Judgment, the trial Court had observed that, the prosecution has failed to prove that the accused were found in possession of contraband as alleged. There is no evidence on record to show that the accused had any conspiracy with any other person and as there is no evidence on record that the charge is answered in negative. Thus, it is apparent that, the co-accused, who were

purportedly found in possession of contraband were acquitted as the prosecution could not establish the case against them. The statement of co-accused has no evidentiary value to convict the petitioner. The case of the prosecution as put up by the prosecution is that the petitioner had allegedly handed over the alleged contraband to the co-accused. The said co-accused has been acquitted by the trial Court. It is also relevant to note that, the petitioner had preferred criminal Writ Petition No.1258 of 2023 before this Court challenging the proceedings in C.R. No. 209 of 2007 which was registered by Anti Narcotic Cell, Mumbai, wherein the prosecution was relying upon the statement of the co-accused vide order dated 10th April 2023. The case of the prosecution was that, the petitioner had allegedly supplied the narcotic drug to the co-accused. Except that, there is no other evidence against the petitioner therein. This Court while allowing the said petition vide order dated 10th April 2023 had observed that, except the statement of co-accused taking name of the petitioner as the supplier of Narcotic drugs, there is no other evidence on record. This Court has also taken into consideration of the fact that the co-accused, who are allegedly found in possession of the contraband were acquitted.

5. In the light of the aforesaid factual matrix, it is noted that there is no evidence against the petitioner and the proceedings against the petitioner in the said crime are required to be quashed.

ORDER

- (i) Criminal Writ Petition No. 3887 of 2023 is allowed;
- (ii) The impugned FIR dated 20th September 2005 registered with Anti Narcotic Cell, Mumbai Vide C.R. No. 87 of 2005 for offences under Sections 8(c) read with 21, 29 of the N.D.P. S. Act, is quashed and set aside qua the petitioner.
- (iii) Writ Petition stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)