

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2158 OF 2024
WITH
INTERIM APPLICATION NO. 2159 OF 2024
IN
CRIMINAL APPEAL NO. 778 OF 2024

Atesham Mohd Rafik Ansari @ Shayam @ ...Applicant
Veernal

Versus

The State of Maharashtra

...Respondents

Mr. R.M. H. Jabali a/w Manasi Naik for the Applicant.
Mr. R.D. Humane, APP for Respondent/State.

CORAM : M.M. SATHAYE, J.
DATE : 11 NOVEMBER 2024

P.C. :

1. Heard learned counsel for the Applicant/convict and learned APP for Respondent-State. Perused the record.
2. By these applications, the Applicant is seeking suspension of sentence and grant of bail under Section 389 of the Code of Criminal Procedure, 1973 during the pendency of the above appeal.
3. The Applicant is convicted by the impugned Judgment and Order dated 15.01.2024 passed by the Special Court for Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 at Greater Bombay in NDPS Special Case No. 746 of 2020. By the impugned order, the present Applicant/Accused No.2 is held guilty and convicted on the

charge of commission of offence punishable under Section 8(c) read with 22(b) of the NDPS Act and he is sentenced to suffer a term of simple imprisonment for 5 years. The Applicant was arrested on 24.01.2020 and released on bail on 30.05.2020. The necessary set off under Section 428 of the Cr.P.C. has been given. According to learned counsel for the Applicant, so far, the Applicant has suffered detention/custody of 16 months as against the sentence of 5 years awarded to him.

4. Learned counsel for the Applicant submitted that there is discrepancy in the date mentioned by PW-7 Panch who has stated that on 25.01.2019, he was called for drawing panchnama to ANC, Worli Unit. He further submitted that if seizure panchanama is perused, it is dated 25.01.2020, while memorandum of statement is recorded on 24.01.2020. He submitted that these discrepancies are not properly considered by the learned Trial Judge and are sufficient to acquit the Applicant. He further submitted that the examination report of the samples mentions the contraband substance found as 'off-white crystalline powder', whereas the evidence of PW-5, Assistant Director of Forensic Laboratories has stated that the packet contained 'off-white powder'. These discrepancies are pressed into service for impressing that the case for acquittal is made out. It is therefore, submitted that the Applicant be released on bail and remainder of sentence be suspended.

5. I have perused the impugned Judgment and order. Neither I find, nor it is brought to my notice that arguments about the alleged discrepancies of the dates are argued before the Trial Court. Passing reference can be found in paragraph 17 of the impugned Judgment, but the Trial Court has held that timings mentioned match. It is recorded in

the impugned Judgment that during custodial interrogation, Applicant offered to show where he has kept the contraband and ultimately it was recovered from his house, which was 19 Grams of Mephedrone (MD) which is an intermediate quantity under the NDPS Act, being more than small but less than commercial quantity.

6. The arguments advanced by the Applicant will have to be considered at the time of hearing of the Appeal. However in my view, at this stage, they are not sufficient enough for grant of bail. The Court is not re-appreciating the evidence at this stage.

7. Considering the quantity recovered at the instance of Applicant, there is possibility of him engaging in the similar activity if released from custody. The offence is grave and a known menace to the society. Therefore considering the gravity and nature of the offence and its detrimental effect on the society at large, I do not find this to be a fit case for suspension of the sentence and grant of interim bail.

8. Hence, both the applications are rejected. However, hearing of appeal is expedited.

(M.M. SATHAYE, J.)