

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1653 OF 2024
IN
CRIMINAL APPEAL NO.329 OF 2024**

John David Joseph ... Applicant (Org. Accused No.1)
V/s.

The State of Maharashtra ... Respondent

Mr. Ayaz Khan a/w Dilip Mishra a/w Zehra Charania & Mallika Sharma
for the Applicant.

Ms. Shilpa K. Gajare-Dhumal, APP for the Respondent-State.

PI Kakade, D.C.B., C.I.D.-11, Kandiwali, Mumbai is present.

CORAM : N.R. BORKAR, J.

DATE : 18TH AUGUST 2025

PC. :

1. By this application the Applicant seeks suspension of sentence and grant of bail during the pendency of the above Appeal filed by him against the judgement and order dated 16th January 2024 passed by the NDPS Special Judge, City Civil & Sessions Court, Greater Bombay in NDPS Special Case No.799 of 2021, by which the Special Judge has convicted the Applicant for the offences punishable under Section 8(c) read with Section 22(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short '*NDPS Act*') and sentenced him to suffer rigorous imprisonment for a period of 10 years.

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2. Learned Counsel for the Applicant submits that the Applicant has good case on merits. It is submitted that till date the Applicant has undergone a substantial part of sentence, i.e., 4 years and 7 months and the Appeal is not likely to be heard in near future. It is thus submitted that the sentence imposed by the trial court may be suspended and the Applicant be released on bail. Learned Counsel for the Applicant in support of his submissions that in case of fixed-term sentences, the Court should not adopt rigid approach, has relied upon the decision of the Hon'ble Supreme Court in the case of *Narcotic Control Bureau vs. Lakhwinder Singh*¹.

3. On the other hand, Learned APP for the Respondent-State submitted that the Applicant is convicted for the serious offence under the NDPS Act. It is submitted that the Applicant is involved in eight more crimes. It is thus submitted that the Applicant may not be released on bail.

4. In the case of *Narcotic Control Bureau vs. Lakhwinder Singh* (supra), the accused was sentenced to ten years and was in jail for 4½ years. The sentence was suspended by the High Court against which appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme

1 2025(1) MLJ (Criminal) 451

Court has observed thus:

- “6. *In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.*
7. *At this stage, the learned ASG appearing for the petitioner submitted that the power of the Court was constrained by Section 37 of the NDPS Act, which is applicable even at the stage of an appeal. He relies upon a decision of this Court in the case of **Dadu v. State of Maharashtra (2000) 8 SCC 437**. There is no dispute about the fact that the Appellate Court is bound by constraints of Section 37 of the NDPS Act while considering the prayer for the grant of bail during the pendency of an appeal. However, if, in the facts of the case, an accused has undergone a substantial part of the substantive sentence and, considering the pendency of criminal appeals, his appeal is not likely to be heard before the accused undergoes the entire sentence, the Appellate Court can exercise the power of releasing the accused on bail pending the appeal. If the relief of bail is denied in such a factual situation only on the grounds of Section 37 of the NDPS Act, it will amount to the violation of the rights of the accused under Article 21 of the Constitution of India.*
8. *In this case, the appeal preferred by the respondent is not likely to be heard before he undergoes the entire sentence. He has already undergone a substantial part of his 10-year sentence. Therefore, there is no reason to interfere with the impugned order in the facts of the case. The Appeal is, accordingly, dismissed. However, if the respondent misuses the liberty granted to him under the impugned order, the appellant can always apply for cancellation of bail.*

5. In the present matter, the fact that till date the Applicant has undergone 4 years and 7 months of imprisonment is not disputed. Considering the pendency of criminal appeals, the Appeal filed by the Applicant is not likely to be taken up for hearing. In that view of the matter, I am inclined to suspend the sentence and release the Applicant on bail.

6. The substantive sentence imposed by the trial court is suspended and the Applicant is released on furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

7. The Applicant shall attend the concerned Police Station once in a month, i.e., on first Saturday between 11.00 a.m. to 1.00 p.m. during the pendency of Appeal and shall not commit any other crime.

8. The Interim Application is disposed of in the aforesaid terms.

(N.R. BORKAR, J.)