

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 389 OF 2025  
IN  
CRIMINAL APPEAL NO. 22 OF 2025

Ngoni Joyce ...Applicant  
*Versus*  
Union Of India And Anr. ...Respondents

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Mr. Zehra Charania with Mr. Ayaz Khan, for the Applicant.  
Mr. S. R. Ketkar, Special Public Prosecutor, for Respondent No.1-  
UoI.  
Mr. R. M. Pethe, APP, for the Respondent-State.

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CORAM: R. M. JOSHI, J.

DATED: 9<sup>th</sup> FEBRUARY, 2026.

PC:-

1. This application is for suspension of sentence and enlargement of the applicant/appellant on bail in connection with Judgment and Order dated 12<sup>th</sup> December, 2024 passed in NDPS Spl. Case No. 129 of 2014, whereby the appellant came to be convicted for the offences punishable under Section 8(c) and 9(A) punishable under Sections 23, 25(A), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") sentencing the appellant to suffer rigorous imprisonment of ten years with fine of Rs.1 lakh with default sentence.

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2. Learned Counsel for the applicant submits that the applicant is ready to deposit the fine amount. It is, however, her contention that the prosecution has failed to prove the offence under the Act against the applicant. It is argued that there is no evidence to show that the samples collected from seized substance were kept safe to ensure it tamper proof nor carrier of samples to CA is examined. It is her further submission by referring to the impugned judgment that the CA report has not been proved nor CA report was put to the applicant/accused in her statement under Section 313 of the Code of Criminal Procedure ( for short “Cr.P.C.”) and, therefore, in both counts the said evidence needs to be kept out of consideration. She placed reliance on order dated 29<sup>th</sup> October, 2010, passed by this Court in **Criminal Application No. 1161 of 2010 in Criminal Appeal No. 543 of 2008 (Muhumuza Pricila Mbabazi vs. Union of India)** to support the said submission. It is thus submitted that in absence of any evidence to connect the applicant in the crime and to prove that the narcotic substance which was allegedly seized is a controlled substance, the offence charge against the applicant cannot be said to have been proved and the rigours of Section 37 of the Act would not apply. It is thus claimed that the applicant/appellant has fair chance of success in the Appeal and since the appeal is not likely to be heard in short period of time, the applicant be enlarged on bail.

3. Learned Special Public Prosecutor opposed the application, firstly on the ground that the offence is serious and methaqualone (a controlled substance) weighing about 14.967 Kg. was seized

from the possession of the applicant. It is his submission that as recorded in the impugned judgment, there are four witnesses examined by the prosecution whose evidence clearly indicate about the seizure of the contraband articles from the applicant. It is his further submission that the CA report can be exhibited even without examining the author thereof and therefore, there is no substance in the contention of learned Counsel for the applicant with regard to its admissibility in evidence. It is his further submission that though the CA report was not put to the accused in her statement under Section 313 of the Cr.P.C., in view of the evidence of four witnesses, the prosecution was able to prove the conscious possession of the controlled substance by the applicant.

4. There cannot be any dispute with regard to the proposition sought to be canvassed by the learned Special Public Prosecutor that examination of the CA may not be necessary for the proof of the CA report. However, at the same time, the burden is on the prosecution to prove that after seizure, samples were collected and till they were sent to CA, were preserved tamper proof. Similarly, carrier needs to be examined to show that the samples were handed over to CA in sealed condition. The learned Special Public Prosecutor read over the entire evidence recorded before the trial Court, however, was unable to point out even a single statement being made by the PW 1, who is Investigating Officer, to show that the seized samples were placed/kept in a secured place and that the said samples were sent to CA for examination. Moreover, even carrier of samples to CA is not examined. In the light of these facts,

the trial Court though it appears from the Rozanama that the CA report is marked at Exh. 48, however, the said report was not put to the appellant in statement under Section 313 of Cr.P.C. All these facts show that applicant has fair chance of success in appeal. Appeal is not likely to be heard in short time.

5. When it is argued that it is a serious case of the seizure of huge contraband, however, the trial seems to have been conducted in collous manner. Learned Special Public Prosecutor placed reliance on judgment of Hon'ble Supreme Court in Special Leave to Appeal No. 14185 of 2025 in case of **Union of India vs. Chidiebere Kingsley Nawchara & Anr.**, wherein concern is flagged about manner in which sureties are accepted and abscondance of foreign national, after grant of bail. In instant case, as reflected from the impugned Judgment and Order, appellant was on bail during trial. She participated in trial. Thus, by imposing appropriate conditions the apprehension of respondent about abscondance of appellant can be taken care.

6. The aforestated facts clearly indicates that the applicant/appellant is a fair chance of success in the appeal. As a result of this, the following order is passed;

**ORDER**

(a) The Interim Application is allowed.

(b) The substantive sentence imposed against the Applicant/ Appellant by Judgment and Order dated 12<sup>th</sup>

December, 2024 passed in NDPS Spl. Case No. 129 of 2014 stands suspended till decision of the Appeal.

(c) The Applicant/Appellant be enlarged on bail on furnishing one solvent surety of Rs.30,000/-, to the satisfaction of trial Court.

(d) The Applicant/Appellant is directed to attend the Air Intelligence Unit- CSMT Airport, Mumbai, on the first Thursday of every month between 10:00 a.m. to 11:00 a.m. till decision of the Appeal.

(e) The Applicant/Appellant shall not leave Mumbai without seeking leave from the trial Court.

(f) Any breach of aforesaid conditions shall result into forthwith cancellation of bail.

7. In view of the above, Interim Application stands disposed of.

8. It is clarified that the above observations are made on prima facie consideration of the material on record and the same shall not bind the parties during the final hearing of the Appeal.

(R. M. JOSHI, J.)