



Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL MISC. APPLICATION NO.299/2025 (F)**  
**IN**  
**CRIMINAL APPEAL NO.292/2025 (F)**

Ifechukwu David Madukwe,  
S/o David Madukwe, Age 35 years,  
Presently Lodged in Judicial  
Custody, Colvale Modern Jail,  
Colvale-Bardez-Goa.

... APPLICANT

*Versus*

1. State of Goa  
(As represented by the Officer  
In Charge, Pernem Police Station,  
Pernem, Goa).

2. State of Goa  
Through the Public Prosecutor,  
High Court of Bombay & Goa,  
Porvorim, Goa.

... RESPONDENTS

Mr Kamlakant Poulekar, Mr Ambarish Gawandalkar, Mr Jagdish Toraskar, Ms Neha Bhobe and Mr Sahil Lavande, Advocates for the Applicant.

Mr P. Faldesai, Additional Public Prosecutor for the State.

**CORAM:** **ASHISH S. CHAVAN, J.**

**Reserved on:** **24<sup>th</sup> APRIL 2026**

**Pronounced on:** **30<sup>th</sup> APRIL 2026**

**ORDER:**

1. By way of the present Application, the Applicant, seeks suspension and release on bail in pending Appeal bearing

No.292/2025. The said Appeal is directed against orders and judgment dated 15.02.2025 and 18.02.2025, whereby the Applicant stands convicted by the Additional Sessions Judge, Mapusa in NDPS/30/2020 for offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and sentenced to undergo rigorous imprisonment for a period of ten years with fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months.

2. The case of the prosecution is that on 31.12.2019, acting upon information from a source, the police party raided a house in Goa. The Applicant was found in the said house and upon search of the house, the police party found 309 grams of cocaine. The same was attached under panchanama. A polythene pack containing green colour paste suspected to be MDMA weighing 200 grams was also found in the said house. However, as per the report of the chemical analyser, the alleged contraband turned to be negative for MDMA.

3. The FIR bearing No.207/2019 was filed against the Applicant. He was arrested for offences punishable under Section 21(c) of NDPS Act. The prosecution filed a charge sheet against the Applicant and the trial commenced before the Court of District Judge, Mapusa. During the course of the trial, the prosecution examined thirteen witnesses. The Applicant pleaded not guilty and claimed to be tried. The Applicant was convicted vide judgment and order dated 15.02.2025 and 18.02.2025.

4. Aggrieved by the aforesaid conviction, the Applicant has filed the Appeal as stated hereinabove.

5. Heard Mr K Poulekar for the Applicant and Mr P Faldessai for the Respondent State. Perused the record.

6. On behalf of the Applicant, at the outset, it was submitted that the Applicant was arrested on 31.12.2019 and since then he is in custody. Thus, as on date, the Applicant is incarcerated for a period of more than six years. The Applicant is a Nigerian national having a valid passport bearing No. A12907664, which is valid upto 15.10.2028. On behalf of the Applicant, it was submitted that the Applicant has undergone more than half of the total period of custody for which he stands convicted. The counsel on behalf of the Applicant submits that the Appeal is pending since 2025 and considering the present pendency of this Court, it is unlikely to be heard within a reasonable time.

7. The counsel on behalf of the Applicant further submits that the Applicant is a first time offender and does not have any criminal cases against him apart from the present conviction. That, if released on bail, the Applicant is willing to deposit his passport and adhere to all conditions imposed by this Court and that there are reasonable grounds to believe that the Applicant is not guilty for the offences that he is convicted for and has a very good chance to succeed in the Appeal.

8. On merits, the principal submission advanced on behalf of the Applicant was that the Trial Court failed to appreciate that the

prosecution failed to establish that the Applicant was in conscious possession of the contraband. The house where the contraband was found, was rented to a Russian national and no evidence was brought by the prosecution on record during the trial to establish the fact that the Applicant was a guest in the house as alleged. The prosecution failed to prove that the Applicant had exclusive control and possession over the premises where the seized contraband was found. The Trial Court erred in relying on the presumption under Section 54 of NDPS Act by assuming that the Applicant had knowledge of the contraband found in the house when in fact, the Applicant was admittedly not the owner of the house where the contraband was found. Moreover, it is not the case of the prosecution that the contraband drugs were found on the person of the Applicant.

9. The attention of this Court was invited to the deposition of PW11, who is the owner of the house where the contraband was found. She had given the house on rent to one Russian lady. The agreement for Leave and License was tendered and proved in Court. PW11 in her deposition has confirmed the above facts. In view thereof, the fact that the Russian tenant of the owner was not examined by the prosecution assumes significance, despite the fact that her statement was recorded by the prosecution and made part of the supplementary charge sheet. Save and except for the fact that the Applicant was present at the time when the raid took place, there is nothing brought on record by the prosecution to show that he was in overall control of the premises or that he has access to the premises by way of a key or any other means of access to the said premises, in his possession. These facts are

confirmed by PW11 in her deposition. In support of his submissions on the point of conscious possession, the Applicant has relied on the judgment of a coordinate bench of this Court passed in the matter of *Fabian Helmchen v/s. State of Goa - Criminal Revision Application No.477/2021 (F) decided on 02.08.2021* which further relies on several leading judgments of the Hon'ble Supreme Court and other High Courts.

10. The Applicant has also argued that it is a settled position of law that in case of fixed-term sentences, the Hon'ble Supreme Court right from the case of *Bhagwan Rama Shinde Gosai and others v/s. State of Gujarat – (1999) 4 SCC 421*, to the judgment of *Narcotic Control Bureau v/s. Lakhwinder Singh – 2025 SCC OnLine SC 366*, has enunciated and reiterated the principle that when a convicted person is sentenced to a fixed period of sentence, and when he files an appeal under any statutory right, suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances. In view thereof, he would urge that this Court may suspend the sentence of the Applicant and admit him to bail, on such terms and conditions as may be deemed fit and proper.

11. Per contra, learned Additional Public Prosecutor opposed the reliefs in the application on the basis of two-fold submissions. *Firstly*, he would submit, that the Applicant is a foreign national and if granted bail, is likely to misuse the liberty and flee the country or indulge in similar kind of offences. This was emphasised in view of the fact that the contraband which was found allegedly at the instance of the Applicant was of

commercial quantity. *Secondly*, it was pointed out by the learned Additional Public Prosecutor that the prosecution has proved the case of conscious possession by examining PW11, the owner. He also referred to the deposition of PW7 who had conducted the seizure panchanama to argue that when the raiding party reached the premises, the door was opened by the Applicant. It was argued that the presence of the Applicant in the said premises was not explained by him and hence, an adverse inference can be drawn against the Applicant.

**12.** I have gone through the record of the Appeal with the assistance of the learned Advocates for the parties.

**13.** Appreciating the rival contentions, some undisputed facts emerge. The Applicant, a foreign national, holds a passport which is valid upto 15.10.2028. He is a first-time offender and does not have any adverse criminal antecedents to his discredit other than the present conviction. On merits, the argument of the Applicant that the prosecution has not demonstrated beyond reasonable doubt that the Applicant was in the conscious possession of the contraband recovered at his instance requires to be considered in the light of the evidence of PW11, the owner of the premises. The Applicant has thus raised arguable questions of law and fact placing reliance on the judgment of *Fabian Helmchen v/s. State of Goa (supra)* which in turn relies on several judgments of the Hon'ble Supreme Court on the aspect of conscious possession. The Appeal is already admitted vide order dated 15.04.2025 and record and proceedings are called for.

14. The Applicant has preferred an Appeal which was filed on 24.03.2025. The evidence runs into about 698 pages, the depositions of as many as thirteen witnesses needs to be considered. In view of the pendency before this Court, the Appeal is not likely to be heard before the completion of the sentence.

15. The Applicant stands convicted for an offence punishable under Section 21(c) of the NDPS Act and is sentenced to undergo rigorous imprisonment for a period of ten years. The Applicant has admittedly undergone approximately six years and four months out of the said sentence, which is more than half of the sentence.

16. Here, a profitable reference can be made to the judgment of *Bhagwan Rama Shinde Gosai (supra)* where the Hon'ble Supreme Court had an occasion to enunciate the parameters for examining the aspect of suspension and bail in a fixed-term sentence. In the facts of the case before the Hon'ble Supreme Court, the appellants were convicted and sentenced to rigorous imprisonment for ten years. Aggrieved by the rejection of their suspension by the High Court, the appellants were constrained to approach the Hon'ble Apex Court which observed thus at paragraph 3:-

*“When a convicted person is sentenced to a fixed-period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the*

*appellate court liberally unless there are exceptional circumstances.....”*

17. The Hon'ble Supreme Court had an occasion to consider the parameters of the aspect of suspension and bail in a fixed-term sentence again in the matter of *Angana and Ors. v/s. State of Rajasthan – (2009) 3 SCC 767* where the Hon'ble Supreme Court, after taking a conspectus of the judgments of *Bhagwan Rama Shinde Gosai (supra)* and *Suresh Kumar V/s. State (NCT of Delhi) – (2001) 10 SCC 338*, was pleased to observe at paragraph 14 as under:-

*“When an appeal is preferred against conviction in the High Court, the court has ample power and discretion to suspend a sentence but that discretion has to be exercised judiciously depending upon the facts and circumstances of each case. while considering the suspension of sentence, each case is to be considered on the basis of nature of offence, manner in which occurrence taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discussion while considering the application filed by the convict under Section 389 of the Criminal Procedure Code.”*

18. Commenting on the aspect of undue delay in the hearing of a substantive appeal as a relevant factor for the grant of bail and suspension of the sentence, the Hon'ble Supreme Court, in

the matter of *Chandra Shekhar Bharti v/s. State of Bihar – 2014 SCC OnLine Pat 7874*, was pleased to observe as under:-

*“100. This Court, therefore, held, in Anurag Baitha's case (supra), that delay, in disposal of appeal, could be considered one of the reasons for suspending, sentence and directing release of the prisoner. on bail, particularly, for the reason that prolonged incarceration of the prisoner is incompensateable and, thus, unless the Court is in a position to hear and dispose the appeal of a prisoner at an early date, it would be a violation of the prisoner's rights, under Article 21, to detain him in prison. This interpretation can well be said to be an extension of “right to life.*

*101. The above observations, made in Anurag Baitha (supra), holds to the effect that delay, in hearing of substantive appeal, because of Courts inability to hear the appeal expeditiously, is a relevant factor for grant of bail to a convict pending disposal of his appeal. In fact, the proposition that—delay, in disposal of appeal, is a relevant factor calling for suspension of sentence and consequent release on bail—has been recognized in Kashmira Singh's case (supra). The reason for the view, so taken in Kashmira Singh's case (supra) and followed in Anurag. Baitha (supra), is that speedy trial is a constitutional right guaranteed by Article 21; hence, when an appeal is an extension of trial, the guarantee, which Article 21 embodies, must be applied to appeals and, therefore, delay, in the disposal of appeal,*

*due to Court's inability to expeditiously heard appeal, provides a reasonable ground for suspension of sentence of appellant and his release on bail pending disposal of appeal.”*

19. The Hon'ble Supreme Court in the matter of *Narcotic Control Bureau v/s. Lakhwinder Singh (supra)*, while dealing with the aspect of suspension and bail to the accused pending appeal under the NDPS Act where the substantive sentence was ten years rigorous imprisonment and where the accused had undergone a substantial part of the substantive sentence, was pleased to observe 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 vs. State of Maharashtra 2 (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.”*

**20.** In the case of *Atul @ Ashutosh v/s. State of Madhya Pradesh – 2024 (3) SCC 663* also, the Hon’ble Apex Court has in a fixed-term sentence of five years where the appellant had already undergone half of the sentence and the appeal against conviction was not likely to reach before he completed the entire sentence, enlarged him on bail while observing as under:-

*‘4. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted, we find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.’*”

**21.** In the light of the aforesaid facts and circumstances, and the guiding principles of the Hon’ble Supreme Court, this Court is of the view that in the facts of the present case, the Applicant has made out a case for suspension of the sentence imposed on him and grant of bail albeit subject to certain conditions.

**22.** Since the Applicant is a foreign national, a profitable reference can be made to *Obineri Sopuru Isaiah Versus State Police Inspector – 2021 SCC OnLine Bom 4547*, where a coordinate bench of this Court has issued directions for the incorporation of certain information in the application for bail filed by foreign nationals. These directions are as under:-

*“30. In view of the aspects discussed above, the Sessions Courts in the State of Goa are directed to ensure that applications for bail/anticipatory bail filed by foreign nationals contain the following information:*

*(a) The full and correct name of the applicant as stated in his/her passport.*

*(b) Full details of passport and visa, including the type of visa and point of entry in India, with copy of the same to be placed before the investigating authority or the Court.*

*(c) Actual status of the original passport. If it is not available, the reasons for the same, alongwith details of the complaint/FIR lodged in that regard.*

*(d) Details of entry into India, if any, prior to the current visit when the applicant is found in conflict with law, with information regarding the passport used.*

*(e) Complete information regarding address in India at the date and time of arrest.*

*(f) Contact details, including mobile/phone and e-mail address used at the time of arrest.*

*(g) Funds available with the applicant, with source of the same, including bank accounts, digital wallets, cash, travellers cheques etc.*

*(h) Details of family members, if any, in India at the time of arrest.”*

**23.** The Applicant herein has furnished the information in terms of the directions of *Obineri Sopuru (supra)* in the present

Application. In view thereof, I proceed to pass the following order:-

(a) The sentence imposed by the Additional Sessions Judge, Mapusa vide its orders and judgment dated 15.02.2025 and 18.02.2025 is suspended until the final disposal of the Appeal subject to deposit of Rs.50,000/- towards partial deposit of fine amount in the Court of the Additional Sessions Judge, Mapusa by the Applicant.

(b) The Applicant, is directed to be released on bail on his executing P. R. Bond of Rs.25,000/- with two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Mapusa.

(c) The release of the Applicant shall be subject to the production of valid passport and VISA. In case the Applicant does not possess a valid VISA, he will be at liberty to apply for the same from jail if such facility is provided by the Respondent State.

(d) Upon producing valid passport and VISA, the Applicant shall place a copy thereof in the Registry of this Court.

(e) The Applicant shall register himself on the basis of such valid passport and VISA with the Foreigners Regional Registration Office (FRRO) Goa within two weeks of his release.

(f) The Applicant shall inform the place of his residence to the Registry of this Court with valid proof thereof and report any changes in the same immediately with appropriate proof.

(g) The Applicant shall file Affidavit before the Additional Sessions Judge, Mapusa within two weeks of his release, stating the source of his funds and source of his income in this country, including bank accounts through which he would be operating his finances.

(h) The Applicant shall not leave the State of Goa without the prior permission of this Court until the conclusion of the Appeal.

**24.** Violation of any of the aforesaid conditions would make the Applicant liable for cancellation of bail.

**25.** The Criminal Misc. Application No.299/2025 (F) stands disposed of in the aforesaid terms. The Registry to waive office objections and register the matter.

**ASHISH S. CHAVAN, J.**