

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 1527 of 2015

Shaikh Masood s/o Shaikh Aziz. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. S.A.G. Qureshi, Advocate, for applicant.

Shri. V.D. Godbharle, Additional Public Prosecutor, for respondent.

With

Criminal Application No. 1528 of 2015

Shaikh Sajid S/o. Shaikh Nisar. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. S.A.G. Qureshi, Advocate, for applicant.

Shri. V.D. Godbharle, Additional Public Prosecutor, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 20th APRIL 2015

ORDER:

1) Both the applications are filed for bail. Both the sides are heard. Previous applications of the present applicants bearing Criminal Application Nos.665/2015 and 713/2015 were withdrawn when this Court had expressed that the Court was not inclined to grant the relief. The previous disposal needs to be treated as dismissal on merits. In view of these circumstances, it was necessary for the applicants to show that there has been change in circumstances.

2) Learned counsel for the applicants has produced copies of orders made by other Hon'ble Judge of this Court in favour of Sheru Moinuddin dated 28-11-2014 in Criminal Application No.6051 of 2014; in favour of Mohd. Mustaq dated 23-12-2014 in Criminal Application No.6873/2014 and order dated 28-1-2015 passed in Criminal Application No. 26 of 2015 in favour of Navnath Nikam. Before considering the merits, it needs to be observed that the orders made by this Court were not

brought to the notice of the Hon'ble Judge and further the provision of Section 54 of the NDPS Act does not find place in the aforesaid orders. For the circumstance mentioned above, parity cannot apply in favour of the applicants.

3) The material collected as against the present applicants shows that when one auto rickshaw was intercepted by the staff on election duty it was noticed that in the rickshaw there were three persons like Shaikh Masood Shaikh Ajij, Shaikh Sajed Shaikh Nisar (present two applicants) and Shaikh Moinoddin. There were two bags with them containing the contraband, Ganja. It was a chance detection. This ganja was weighing 24 kg. The applicants came to be arrested and taken over by police on the spot after receiving information and the ganja came to be seized.

4) The material collected shows that the contraband which was of commercial quantity is recovered from the possession of the applicants. Provision of Section 54 of the NDPS Act shows that presumption

can be drawn against the present applicants for conscious possession of the contraband, ganja. Then the bar of section 37 of the Act needs to be considered by this Court. Due to aforesaid facts it cannot be said that there was no reason to believe that the applicants are not guilty of the offence. Such persons are generally involved in similar activities and there is possibility that the applicants will be engaged in similar business after getting bail. Thus there is bar under section 37 for grant of bail.

5) Learned counsel for the applicants submits that there is marriage in the family of applicant Shaikh Masood and he wants to attend the marriage. When this Court expressed that some arrangement of escort can be made to enable the applicant to attend the marriage provided that the expenses of the escort are borne by the applicant, the learned counsel submitted that the applicant is not ready for the same as he is a poor person and the learned counsel submits that he cannot afford to pay the charges.

6) Learned counsel for the applicants then placed reliance on a case reported as **2014 ALL MR (Cri) 4589 (Jagan Parasram Chavan v. The State of Maharashtra)**. In that case bail was granted as the recovery of ganja was not of commercial quantity. Thus this case is of no help to the applicants. Learned counsel then placed reliance on a case reported as **2009 ALL MR (Cri) 357 (Rupsing Gopal Barela v. State of Maharashtra)**. In this case bail was granted on the ground of lack of evidence of conscious possession when there was allegation that the accused cultivated ganja on forests land by making encroachment on the land. In this case the Hon'ble Judge of this Court has referred to a case of the Apex Court reported as **AIR 2000 SC 3343 (Avtar Singh v. State of Punjab)**. This case is in respect of appreciation of evidence at the time of trial. At the time of consideration of bail application the bar which is mandatory in nature, which is discussed above, needs to be kept in mind by the Court. This Court holds that there is such bar and the applications cannot be allowed.

7) Both the applications are rejected. The trial Court is expected to dispose of the case expeditiously and within six months from the date of receipt of the order.

Sd/-
(T.V. NALAWADE, J.)

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