

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2631 OF 2014

IN

CRIMINAL APPEAL NO.265 OF 2014

- 1) Santosh s/o Bhagwan Waghmare,
Age-28 years, Occu:Labour,
R/o-Mahatma Gandhi Kushtadhan Colony,
Latur,

(Orig. Accused No.1)

- 2) Madhav @ Sadhu s/o Rama Ambade,
Age-21 years, Occu:Labour,
R/o-Mahatma Gandhi Kushtadhan Colony,
Latur.

(Orig. Accused No.4)

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr. Sachin S. Shinde Advocate for Applicants.
Mr. B.L. Dhas, A.P.P. for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 13TH FEBRUARY, 2015

ORDER :

1. Heard learned counsel for Applicants.

2. Original accused Nos.1 and 4 convicted in Special Case No.1 of 2007 by Additional Sessions Judge, Ambajogai for offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act (for short "N.D.P.S. Act") and sentenced to suffer rigorous imprisonment for ten years and fine, have filed present Application for bail. The Applicants were apprehended along with other two accused. Accused No.3 was convicted under Section 20(b) read with 31 of the N.D.P.S. Act and sentenced to suffer rigorous imprisonment for fifteen years, the offence being second offence.

3. The counsel for Applicants is pointing out that according to the prosecution 7 K.G. Ganja was seized from Applicant No.1 and 8 K.G. Ganja

was seized from Applicant No.2. According to him, present Applicants were on bail in the trial Court and after conviction they have been sent to jail. He submits that the evidence which was brought on record by the prosecution if seen, there is reason to question the evidence and bail should be granted to the Applicants. He referred to the evidence of PW-1 as well as document Exhibit 39 from the record. He submits that according to prosecution, the Applicants along with other two accused, were travelling in passenger train, going between Hyderabad to Aurangabad and on 11th September 2007 at about 4.00 hours, PW-1 along with other police officials while checking, came and caught the accused under suspicion. The argument is that the bags concerned from which the Ganja was seized, were under the seat and thus according to the counsel, it cannot be said that the same were seized from the possession of the Applicants.

4. Learned A.P.P. is opposing the Application. According to him, the evidence brought on record in the trial Court was reliable and the trial Court has rightly convicted the accused persons and no case for bail is made out, looking to the nature of offence and the contraband which was seized.

5. I have gone through the case of the prosecution as well as the documents pointed out by the learned counsel for the Applicants. The accused No.1 to 4 are having same address and were travelling together sitting on same berth and one of the accused was a repeat offender under the N.D.P.S. Act. The evidence of PW-1 Pathan who caught the accused persons, shows that the bags in which the contraband was found were seized from accused in train. I do not find that this is a fit case where bail should be granted. The merits of the matter would be considered and decided in the Appeal. At present no case to grant bail is made

out when the trial Court has found that the said Ganja was seized from Applicant Nos.1 and 2.

6. The Criminal Application stands rejected.

[A.I.S.CHEEMA, J.]

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