

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.339 OF 2015

Saiful Usman Sayyad	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. Kuldeep Patil, for the Applicant.
Mr. D.P. Adsule, APP for Respondent – State.
IO. Mr. S.D. Sawant (API.), Uran police station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JUNE 29, 2015**

P.C.:

. The application is moved for bail as the applicant is facing charges under section 20(b) of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the said Act”).

2. It is the case of the prosecution that the police received information on 5th October, 2014 that a person by name Saiful Sayyed i.e. the applicant/accused was likely to come to sell *ganja* at Court naka, Uran, District Raigad. Accordingly, they arranged a trap alongwith panchas. As soon as they found a suspicious activity and a person of the description

they have received, they apprehended him. His personal search was taken in the presence of gazetted officer and they found approximately two kgs. of *ganja* with him in a white carry bag. The panchanama was drawn. He was arrested and the police then sent the *ganja* for C.A. test and the offence was registered against him. He is behind bars since then. Hence, this bail application.

3. The learned Counsel for the applicant/accused restricted his submissions on two legal points: Firstly, non-compliance of section 50 of the said Act. In support of his submission, he relied on the judgment in the case of "*Vijaysinh Chandubha Jadeja vs. State of Gujrat*"¹. He submitted that the police officer, who was a gazetted officer did not make the accused aware of his right to have a personal search in the presence of a gazetted officer or a Magistrate. Secondly, he submitted that as per the case of the prosecution, the quantity of *ganja* which was seized from the applicant/accused was two kgs. If it is so, he was definitely not possessing *ganja* of a small quantity to get benefit under section 27 of the said Act. Similarly, as he was not carrying *ganja* upto twenty kgs. or more than twenty kgs., which is for the commercial use and therefore the rigour under section 37 shall not come in the way. He prays for bail.

1. AIR 2011 SUPREME COURT 77.

4. The learned prosecutor while meeting these two legal submissions argued that Section 50 of the said Act is not applicable. In the present case, *ganja* was found in a plastic bag which the accused was carrying at the relevant time. The learned prosecutor relied on the ratio laid down by the Supreme Court in the case of “*State of H.P vs. Pawan Kumar*”². The learned prosecutor has submitted that bar of Section 37 of the NDPS Act is there if the imprisonment is more than five years. The learned prosecutor on the point of Section 37 of the NDPS Act has further submitted that if the punishment is more than five years, then bail is not to be granted. The present case falls under Section 20(b) of the said Act where the quantity is greater than small quantity. Therefore rigorous imprisonment for a term which may extend to ten years with fine can be awarded. He relied on the ratio cited in the judgment of “*Pramod Ganpat Wankhede and Another vs. State of Maharashtra*”³ where the legal position under Section 37(1)(b) of the said Act before and prior to amendment is discussed.

5. In the present case, the applicant/accused was found with 2 kgs. *ganja* carrying in a plastic bag. It is true that the accused was not informed about his right of personal search as per the requirement of

2. (2005) 4 Supreme Court Cases 350.

3. 2002 (2) Mh. L.J.

Section 50 of the NDPS Act. However, in view of the judgment of Supreme Court in case of Pawan Kumar (supra) as observed in para 11 and 12 of the said judgment, a carry bag or a briefcase can not be treated as a body of the human being and thus that will not come under the ambit of the definition “*Person*” as contemplated under Section 50 of the said Act.

6. The section 37(b) of the said Act places bar on the offences punishable under Sections 19, 24, 27-A and also for the offences involving commercial quantity. The quantity of *ganja* which was found with the applicant/accused was two kgs. i.e. just not commercial quantity of *ganja*. So also not a small quantity and therefore it fall under 37(b) of the said Act. In para 19 of the judgment in the case of Pramod Wankhede (supra), the Division Bench of this Court has taken view that, granting of bail and rigour of Section 37 of the said Act depends on the specific offences and the involvement of the commercial quantity or lesser quantity of the contraband article.

7. In view of the above, the quantity of the contraband article found, the applicant/accused is entitled to bail. On instructions from the investigating officer, it is informed by the learned prosecutor that there are no antecedents against the applicant/accused. Hence, bail can be granted.

8. Hence, I grant bail as under:
- a) The applicant/accused be enlarged on bail upon furnishing P. R. Bond in the sum of Rs. 1,00,000/- (One lac) with one or two solvent surety/s in the like amount;
 - b) The applicant/accused shall attend all the Court dates regularly.
 - c) The applicant/accused shall not indulge in any kind of similar offences under the said Act.
 - d) The applicant/accused, in the event of change of his residence, shall inform the address to the police station.
9. Bail application is disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)