

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

CRIMINAL APPLICATION NO. 6008 OF 2016
IN
CRIMINAL APPEAL NO. 648 OF 2016

Laxman Ashruba Narwade,
Age : 48 years, Occu. Agriculture,
R/o. Ardhamasla, Tq. Georai,
Dist. Beed.

.. Applicant
(Orig. Accused No. 4)

Versus

The State of Maharashtra.

.. Respondent

.....
Mr Joydeep Chatterji, Advocate for the applicant
Mr B. V. Virdhe, APP for respondent/State
.....

WITH
CRIMINAL APPLICATION NO. 6178 OF 2016
IN
CRIMINAL APPEAL NO. 678 OF 2016

Datta S/o Vachsita Bajgude,
Age : 25 years, Occu. Driver,
R/o. Padalsingi, Tq. Georai,
Dist. Beed.

.. Applicant
(Orig. Accused No. 3)

Versus

The State of Maharashtra.

.. Respondent

.....
Mr Rajendra G. Hange, Advocate for the applicant
Mr B. V. Virdhe, APP for respondent/State
.....

CORAM : V. L. ACHLIYA, J.

DATED : 16.12.2016.

PER COURT :

1. Both the applications are filed by original accused Nos. 3 and 4 seeking bail during the pendency of appeal.

2. Heard the learned counsel for the applicants and learned APP for the State. Perused the Record & Proceedings.

3. The applicants (original accused Nos. 3 and 4) along with co-accused Nos. 1 and 2 were tried for committing offence under Section 399 of the Indian Penal Code, Section 3 & 4/25 of the Indian Arms Act and Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act"). On conclusion of the trial, the learned Additional Sessions Judge, Aurangabad has acquitted all the accused for offence under Section 399 of the IPC. They were held guilty of offence under Sections 3, 4/25 of the Indian Arms Act and sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 10,000/- each. They were also held guilty of committing offence u/s 22 of NDPS Act and sentenced to suffer rigorous imprisonment for

10 years and to pay fine of Rs. 1,00,000/- each, and in default, to suffer simple imprisonment for one year. Being aggrieved, the applicants (original accused Nos. 3 & 4) have preferred Appeal and pending disposal thereof, claim to be released on bail on the grounds as set out in detail in the respective applications.

4. Learned counsel representing the applicants strenuously contended, that the conviction of the applicants is not sustainable in law. It is pointed out, that the prosecution has approached with a case that on receiving the reliable information that certain persons are coming in a Jeep with a preparation to commit dacoity. A trap was laid. The vehicle in which the applicants were traveling was intercepted. The driver of the vehicle alleged to have run away. The present applicants along with co-accused Nos. 1 and 2 were found in the Jeep. On taking personal search from accused Nos. 1 and 2, two revolvers/pistol were recovered. From personal search of applicants (accused Nos. 3 & 4), it is alleged that two long knives were recovered. The articles like wooden rods, rope and chilly powder to be used for the purpose of committing dacoity also recovered from said Jeep. Besides said articles, the Police have found one plastic bag containing 2.5 Kg. opium (Afim). By

referring the evidence on record and particularly the seizure panchanama and the First Information Report lodged by the Investigating Officer, it is pointed out that the recovery of the contraband article i.e. the opium, is shown to be recovered from the possession of accused No. 1 – Narayan. It is nowhere depicted in the panchanama nor in the FIR, that the present applicants were in conscious possession of the alleged narcotic recovered from the vehicle. The panchanama and the FIR reflect, that the officer concerned, who seized the said contraband article, has made the inquiry in respect of the said article from accused No. 1, who is alleged to have said that the contraband article was carried to be sold to some person near Baba Petrol Pump at Aurangabad and he was not knowing the name of the person but, he was only having phone number of that particular person. It is, therefore, contended that it was nowhere the case of the prosecution that the applicants (original accused Nos. 3 and 4) were found in conscious possession of the contraband article. During the trial, the prosecution has failed to prove that the accused Nos. 3 and 4 had a knowledge about the contraband article and they were in conscious possession of the same. The learned counsel for the applicants also pointed out that the prosecution has failed to prove that the contraband article seized was opium and that too weighing 2.5 kg. to be termed as a commercial

quantity. It is further pointed out, that there is no compliance of mandatory provisions under the NDPS Act. It is, therefore, contended that the charge u/s 22 of the NDPS Act has not been proved beyond reasonable doubt. It is further pointed out that during the trial, the applicants were on bail. It is further contended that, it will take long time to hear the appeal on merit. It is, therefore, urged to release the applicants on bail.

5. On the other hand, learned APP has opposed the application with contention, that the applicants are held guilty of offence u/s 22 of the NDPS Act, which is serious in nature. It is further contended, that the accused No. 3 – Laxman was the owner of the vehicle. The applicants have not offered any explanation as to how they were traveling in the Jeep. It is further contended that, a dagger was recovered from the personal search of both the applicants.

6. In order to appreciate the submissions advanced, I have thoroughly perused the Record & Proceedings. The applicants (Original accused Nos. 3 and 4) were on bail during the trial. The applicants along with co-accused were acquitted for offence u/s 399 of the IPC. The panch witnesses have not supported the case of the prosecution. They were declared

hostile to the prosecution. Similarly, photographer and the person, who is alleged to have measured the contraband article seized, not supported the case of the prosecution. The fact is not in dispute that the Jeep in question was intercepted and the applicants (original accused Nos. 3 and 4) were found along with accused No. 1 and 2, from which said contraband article was recovered/seized. Arguable questions have been raised in the appeal. It needs to be considered as to whether the prosecution has proved that the applicants were found in conscious possession of the contraband article. It is to be examined as to whether the compliance of mandatory provisions under the NDPS Act has been made from the stage subsequent to seizure of the alleged contraband article.

7. The seizure panchanama depicts that, the Investigating Officer has confined the inquiry to accused No. 1 – Narayan about the contraband article found in the Jeep. So also the inquiry as to whether the Gazetted Officer to be called for the purpose of seizure was made to accused No. 1. It is therefore necessary to examine as to whether the applicants were in conscious possession of the contraband article. No doubt, the accused No. 3 has claimed the owner of the vehicle and it was expected on his part to offer explanation

but the fact remains, it is for prosecution to prove its case beyond reasonable doubt. In this view, I am of the view that an arguable case is made out in an Appeal. During the pendency of trial, the applicants were on bail. I am therefore, of the view that the applicants deserve to be enlarged on bail with certain conditions.

8. It is clarified that, the observations as made in the foregoing paras are made for the limited purpose of deciding the present applications. The observations so made shall not have bearing upon the merits of the case & same shall not be treated as observation made as to merit of case. Similarly, the co-accused will not be entitled to claim bail on the ground of parity. Hence, the following order.

ORDER

- (1) Criminal Application No. 6008 of 2016 and Criminal Application No. 6178 of 2016 are allowed.
- (2) Pending disposal of appeal, substantive sentence of imprisonment awarded by the Sessions Court in Sessions Case No. 10 of 2012 under Judgment & Order dt. 15.10.2016 convicting the

applicants under Sections 3, 4/25 of the Indian Arms Act and 22 of the NDPS Act, stands suspended subject to deposit of fine.

(3) Pending disposal of appeal, the applicants (accused No. 3 – Datta S/o Vachsita Bajgude & accused No. 4 – Laxman Ashruba Narwade) be released on bail on their furnishing bail in the sum of Rs. 1,00,000/- (Rupees One Lakh) each, on the following conditions.

- (a) Both the applicants herein visit and record their attendance with Pachod Police Station, Dist. Aurangabad, on first day of each month in between 10:00 to 12:00 noon before the Officer In-charge of the Police Station, till disposal of the appeal.
- (b) Applicants shall furnish their names, addresses and phone numbers with residential proof as well as names, addresses & phone numbers of their three close relatives.
- (c) The applicants shall not indulge into similar type of offence.
- (d) In the event of change in address, the Applicants shall inform the concerned Police Station as well as information to that effect be given to the Court.

- (4) In case of breach of any of the conditions as above, bail granted to the applicants shall be liable to be cancelled.
- (5) The officer in-charge of the Police Station Pachod shall submit quarterly report to this Court as regards the compliance of the conditions by the applicants.

[V. L. ACHLIYA]
JUDGE