

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1510 OF 2015

Imran Shahid Khan ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

WITH
BAIL APPLICATION NO.1693 OF 2015

Wasim Kabir Khan ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Ayaz Kahan, Advocate for the Applicant in Bail Application No.1510 of 2015

Anjani Kumar Singh with Vatsal Verma with D.S.Mishra i/b. D.S. Law Bureau, Advocate for the Applicant in Bail Application No.1693 of 2015

Ms.S.S.Kaushik, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 15th JUNE 2016.

P.C.

1. As both the applications are arising out of Crime No.II-56 of 2014 registered by Kashimira Police Station for the offence punishable under Sections 8(c), 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act (In short, “the NDPS Act”) on

29/09/2014, same are decided by the common Judgment and Order.

2. In the present crime, there are in all four accused. Accused Nos.1 and 2 are before this Court, while accused No.3's application for bail is stated to be pending before the trial Court and applicant No.4 is released by the trial Court by its order dated 28/01/2016.

3. It appears to be the case of prosecution that on 29/09/2014, officers of Kashimira Police Station posted at Versova Police Check Post at Mumbai-Ahmedabad were checking the vehicles. While at around 12.10 p.m. one Innova Car came to be intercepted on suspicion, which was found to be occupied by five persons and on obtaining its search two bags came to be recovered from its rear portion, which were found containing 30 k.g. of *ganja*. All the contraband came to be seized on spot and on apprehending accused, they were brought to Kashimira Police Station, where panchnama of said fact was done. On the basis of report lodged by PSI-Patil, offence came to be registered as above.

4. Investigation is completed and charge sheet is filed before the Court. The learned counsel for the applicant had invited my attention to the seizure panchnama and has contended that in the entire document, there is no description of alleged

contraband stated to have been recovered by the police during *nakabandi*. It is further contended that even otherwise the samples were not forwarded to the chemical analysis immediately after its seizure and were forwarded after lapse of 10 days for which no satisfactory reason is put forth by the prosecution. From the documents and say of prosecution filed before the trial Court, opposing bail application of accused No.4, it is pointed out that even otherwise role attributed to the applicant is similar to that of accused No.4, who is released by trial Court on bail, applicant, as such, also claim bail on parity. Lastly, it is pointed out that though according to the contention of seizure panchnama, it is the case of prosecution that seal of panchas, as well as police officials was put on seized packets containing sample of contraband *ganja*, no facsimile seal of panchas was forwarded to Chemical Analyzer and by referring to the requisition letter to the Chemical Analyzer, it is pointed that facsimile seal of police alone was forwarded. The learned counsel for the applicant had also relied upon the order of this Court having similar set of facts in a Bail Application moved under the provisions of NDPS Act, wherein this Court has held that on failure to describe the contraband seized under the seizure panchnama, there is nothing to establish that whatever samples forwarded to Chemical Analyzer were of the contraband alleged to have been involved in the crime.

5. The learned Additional Public Prosecutor appearing for

the State has opposed the application and has contended that as there is specific description of contraband sample mentioned in the Chemical Analysis report, it cannot be said that sample of contraband which came to be seized during the raid were not forwarded for its analysis, and has contended that in the event that the applicant is considered to be entitled for bail, stringent condition be imposed so as to secure his presence for the purpose of trial.

6. In the background of the submissions, as aforesaid, and on perusal of panchnama it appears that vehicle came to be intercepted while it was proceeding by the road, on suspicion. Material portion of seizure panchnama, which in the light of submissions, as aforesaid, when considered reveals that in all 15 packets containing of 2 k.g. of contraband came to be seized from the vehicle, totally weighing 30 k.g. The description of contraband as stated in that is each packet weighing 2 k.g. was found rapped in brown coloured plastic sheet having pasted with cello tape consisting blackish, greenish coloured substances known as *ganja*. Except for above description, there are no any details mentioned in the seizure panchnama.

7. This Court, while considering said aspect in Bail Application No.2522 of 2014 has dealt with this issue in detail along with definition of *ganja* as defined in Section 2(iii)(b) of

the NDPS Act, 1985, and has concluded that in the description of the seizure panchnama, nowhere the police have mentioned that the material found was with flowering or fruiting tops along with the seeds, leaves and stalks. For want of such description, the description mentioned in the seizure panchnama would be too short to bring the case within the ambit of provisions of NDPS Act, and further observed that the Legislature in its wisdom has specifically excluded seeds and leaves, and has specifically mentioned that cannabis means fruiting or flowering tops and that, there may be seeds and other portion of that shrub along with the flowering or fruiting tops, but the flowering and flowering top is a necessary ingredients of definition of *ganja* i.e. cannabis under the Act and in the light of above aspects allowed the application.

8. Facts involved in the present application as referred above are similar to the one, which is already considered by this Court.

9. With reference to the submissions advanced by the the learned Additional Public Prosecutor and on perusal of C.A. report, though it reveals that there is detail description of samples sent for analysis, contents of seizure panchnama as noted above are totally silent with regard to the detail description of contraband, except stating therein that some substance of greenish blackish in colour

was found of which samples were drawn, nowhere it is mention in detail that the contraband seized was appearing both flowering/fruited tops with greenish leaves and stalks.

10. Another aspect which also needs consideration is about the facsimile seal of panchas which apparently is not forwarded to Chemical Analyzer, though from the contents of seizure panchnama, it reveals that in addition to seal of Investigating Officer/police, seal of panchas was put on the seized article. This fact is found to be more substantiated from further contents of seizure panchnama, where there is specific mention of panchas putting their seal and signatures on the seized contraband.

11. In that view of the matter, from the contents of seizure panchnama, it is noted that apart from obtaining signatures of panchas, their seals are also put on seized muddemal article including the sample packets. However, from the requisition letter to Chemical Analyzer, it is noted that no facsimile seal of panchas was sent. Moreover the samples of contraband involved in this crime, that were seized on 29/09/2014 are admittedly not seized on the spot, but appears that the panchnama was carried out at nearby Police Chowky of Kashimira Police Station. So also, the samples were not forwarded for its analysis for a long period of ten days for which no satisfactory explanation is on record.

12. Having considering the facts, as aforesaid, and as it appears to be the case of prosecution from its reply filed before the learned trial Court wanted accused is involved in importing *ganja* to Ahmedabad from Mumbai through accused Nos.3 and 4 and distributed to present applicants. The role of present applicant, as above, appears to be on better footing than that of accused No.4, who is granted bail.

13. Under the circumstances, applications are liable to be allowed by imposing some suitable conditions as per order below :

- (i) Applicants - Imran Shahid Khan and Wasim Kabir Khan involved in Crime No.II-56 of 2014 registered by Kashimira Police Station shall be released on bail on their executing personal bonds in the sum of Rs.30,000/- each with one surety each in the like amount.
- (ii) While on bail, the applicants shall not indulge in any kind of offence and shall not tamper with evidence.
- (iii) Applicants shall not leave jurisdiction of this Court without prior permission of Investigating Officer and shall mark his presence before the learned trial Court on the fixed dates of hearing.

14. Applications stand disposed of.

(P. N. DESHMUKH J.)